

No. 49066-8-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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ROBERT N. FLAGELLA,

Appellant,

v.

PAMELA R. FLAGELLA.

Respondent

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BRIEF OF APPELLANT  
(Consolidated)

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MASTERS LAW GROUP, P.L.L.C.  
Shelby R. Frost Lemmel, WSBA 33099  
241 Madison Ave. North  
Bainbridge Island, WA 98110  
(206) 780-5033  
Attorney for Appellant

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## INTRODUCTION

Although the trial court intended to divide the parties' assets evenly, its distribution is thrown out of balance by a series of property characterization errors. Most notably, the court awarded Pamela Flagella her entire 401(k) (\$151,764) as her separate property, yet characterized Robert Flagella's entire 401(k) (\$356,877) as community property, despite 20 years of pre-marital contributions. The court failed to address Bob's American Century IRA's (over \$50,000), yet divided both as if they were community property, even though Bob acquired them before marriage and there is no evidence of commingling. And the court failed to account for Bob's inheritance (\$102,000), even though it is uncontested that it remained untouched in a single account until liquidated for the down payment on the marital home. Compounding these characterization errors, the court awarded Bob \$85,000 that does not exist, but was spent pursuing a business opportunity for the community.

The court also erred in declining to modify maintenance post trial, where Bob lost his job and has no income to pay the \$6,000 monthly maintenance obligation. Bob cannot pay Pam without selling his assets, or continuing to accrue debt. That is not equitable.

This Court should reverse.

## **ASSIGNMENTS OF ERROR**

1. The trial court erred in finding that all of Robert Flagella's ("Bob") Dow Chemical 401(k) is community property. CP 596-97, 649-50.<sup>1</sup>
2. The court erred in dividing Bob's American Century IRAs as if they are community property without first addressing their separate-property character. CP 604, 608, 630, 634.
3. The court erred in characterizing Bob's separate property inheritance as community property. CP 597, 650.
4. The court erred in awarding Bob \$85,000 that no longer exists. CP 608, 634.
5. The court erred in failing to enter findings adequate to explain its property characterizations and distribution. CP 593-986.
6. The court erred in entering the decree of dissolution, distributing the parties' assets. CP 626-51.
7. The court erred in denying Bob's motion to modify maintenance. CP 754-56.

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<sup>1</sup> First names are used to avoid confusion. No disrespect is intended.

### **ISSUES RELATED TO ASSIGNMENTS OF ERROR**

1. Did the trial court err in characterizing Bob's entire 401(k) as community property, where it is undisputed that he acquired the asset before the marriage, and paid into it for 20 years before the marriage?
2. Did the court err in failing to characterize Bob's American Century IRAs as his separate property, where it is undisputed that they were acquired before the marriage, and there is no evidence that they were commingled?
3. Did the court err in failing to characterize Bob's inheritance as his separate property, where the undisputed evidence is that it remained untouched in a single account until Bob liquidated it to contribute to the down payment on the marital home?
4. Did the court erroneously award Bob \$85,000 that does not exist because Bob invested it to pursue a business opportunity for the community that did not pan out?
5. Are the court's findings on these characterization issues inadequate to permit meaningful review?
6. Did the court erroneously decline to modify maintenance, where Bob lost his job and his livelihood through no fault of his own, and cannot pay \$6,000 a month in maintenance without an income?

## STATEMENT OF THE CASE

Appellant Robert Flagella appeals from the distribution of assets and the denial of his motion to modify maintenance following the parties' dissolution. This brief addresses the facts related to those issues in the argument section below. The following briefly provides the relevant background.

Bob and Pam Flagella married in September 1995. RP 16. Bob was almost 43, and had not been married before. RP 175. Pam, then 38, had two daughters from a prior marriage, one in third grade and one in eighth grade. RP 71; CP 594. Pam sold her home, and she and her daughters moved into Bob's home with the intent to remodel and sell it before buying a larger home. RP 71, 74. They eventually did so, purchasing the marital home in 2010. RP 74, 196.

Pam left her job shortly after the parties married, as they jointly agreed that she should take some time off to be with the children. RP 50-51, 64-65, 184. She did not work for 5 or 6 years, aside from taking a temporary position when Bob was laid off from his 22-year career at Union Carbide Corporation two years after the parties married. RP 50-51, 177-78. Bored at home, Pam always intended to go back to work. RP 185. She returned to work "pretty regularly" in 2004, and remained employed until 2010. RP 60-61, 184-85. When

her position was moved out of State in 2010, Pam took a severance package and has not worked since. RP 185.

After being laid off from Union Carbide Corporation in 1997, Bob worked principally at CH2M Hill during the marriage. Ex 60. When the parties divorced in the spring of 2016, he had been working as a project manager at Glumac for about three years. RP 211, 214; Ex 60. At the time of trial, Bob was concerned that his position with Glumac was not secure. RP 214. As addressed below, Bob lost his position at Glumac on April 1, shortly after trial, but before the court entered final orders. CP 746-47.

For much of the marriage, Bob supported Pam and the girls while Pam was not working. RP 71-73. The parties put both children through private high school, and paid for both to obtain four-year college degrees.<sup>2</sup> RP 72-73. Bob set up IRAs for the girls and matched their contributions dollar-for-dollar. RP 73-74. The parties also agreed to help them with a down payment on their first home purchases. RP 74-75, 206.

The oldest child, Lori, and her husband were in the process of buying their first home around the time the parties separated. RP 74.

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<sup>2</sup> The oldest child attended private high school for two years, and the youngest for four. RP 73.

Bob insisted that he and Pam make good on their promise to help with a down payment. RP 75. When Pam removed \$50,000 from the parties' joint checking account, leaving insufficient funds for Lori's down payment, Bob liquidated investments to put together nearly \$60,000 for the down payment. RP 75, 207; Ex 67.

Pam filed for separation in August 2014, and the parties went to trial in March 2016. RP 11-12; CP 1-3. At the time of trial, Bob was 63 and Pam was 59. RP 12, 213. They listed the marital home for sale before trial, but Pam continued to live in the home. RP 12-13. Bob lived with friends and out of his car. RP 107, 127.

Pam asked the trial court to award her 55% of the community assets, including \$500,000 in cash from the sale of the marital home, valued at just under \$600,000 net. RP 14, 83-84; CP 634. She also asked to be awarded, as her separate property, her pre-marital Arthur Anderson 401(k), valued at \$151,764.86. RP 16-17; CP 634. Pam, who had received nearly 1.5 years of maintenance already, sought seven more years of maintenance in the amount of \$7,000 per month, half of Bob's gross income. RP 62, 86; CP 67. That would leave Bob paying maintenance until he turned 70 or 71. *Id.*

Although Bob agreed that Pam should receive her Arthur Anderson 401(k) as her separate property, Pam argued that the court

should not recognize any separate-property portion of Bob's 401(k), despite acknowledging that he had paid into it for 20 years before the marriage. RP 17, 66-68. Pam asked that nearly every asset other than her 401(k) be characterized as community property, despite acknowledging that she knew little about their character. RP 19-23.

The trial court awarded Pam her Arthur Anderson 401(k) as her separate property, but characterized Bob's entire 401(k) as community property. RP 260-61; CP 595-96, 634, 649-50. The court characterized all investments as community property, at times, failing to even address their disputed character. CP 630-35.

The court awarded each party 50% of the assets characterized as community property, leaving each party just under \$550,000, the vast majority of which is in investment and retirement accounts. CP 634-35. The court also awarded each party 50% of the proceeds from the sale of the house, valued at just under \$600,000 net. CP 630-33. The award to Bob includes an \$85,000 phantom asset representing a business investment for the community that did not pan out. CP 634.

The trial court also awarded Pam \$6,000 a month maintenance for an additional 42 months. CP 595, 627. Bob will be 67 years old when the maintenance term ends. CP 627; RP 175.

Bob timely appealed. CP 652.

About six weeks after the court entered final orders, Bob was forced to move to modify maintenance, where he lost his job at Glumac and has been unable to find meaningful employment. CP 746-48; App. A at 1-2. The trial court denied Bob's motion to modify, finding that Bob continued to possess the same earning capacity as he had at trial. CP 754-56. Thus, despite having gone from \$9,000 a month net income, to \$2,000 in unemployment income (until it ended), the trial court required Bob to continuing paying Pam \$6,000 a month in maintenance. CP 594, 747, 754-56. Bob timely filed a second notice of appeal, and this Court subsequently consolidated the two appeals.

## ARGUMENT

### A. Standards of review.

The trial court "must have in mind the correct character and status of the property as community or separate before any theory of division is ordered." *In re Marriage of Schwarz*, 192 Wn. App. 180, 191, 368 P.3d 173 (2016) (quoting *Blood v. Blood*, 69 Wn.2d 680, 682, 419 P.2d 1006 (1966) (citing *Shaffer v. Shaffer*, 43 Wn.2d 629, 262 P.2d 763 (1953))). "A trial court's characterization of property as separate or community presents a mixed question of law and fact."

**Schwarz**, 192 Wn. App. at 191-92 (citing *In re Marriage of Kile*, 186 Wn. App. 864, 876, 347 P.3d 894 (2015) (citing *In re Marriage of Martin*, 32 Wn. App. 92, 94, 645 P.2d 1148 (1982))). Fact questions include the time and method of acquisition. **Schwarz**, 192 Wn. App. at 192. Thus, whether a party overcomes a rebuttable presumption of community or separate property character is a question of fact. 192 Wn. App. at 192. But “the ultimate characterization of the property as community or separate is a question of law [reviewed] *de novo*.” *Id.*

**B. The trial court erroneously failed to treat a portion of Bob’s Dow Chemical 401(k) as his separate property, despite 20 years of pre-marital contributions.**

The trial court characterized Bob’s Dow Chemical Company 401(k) as community property, despite the fact that Bob was employed at Union Carbide Corporation – now Dow – for 20 years before marriage, and only two years after marriage. In doing so, the court incorrectly presumed that the Dow 401(k) was community property, despite the fact that it was plainly and undisputedly acquired 20 years before the parties married. The court also ignored Pam’s concession that Bob should be awarded the separate portion of the Dow 401(k). The result is unfair and unjust, particularly in light

of the fact that Pam was awarded her entire separate property 401(k), valued at over \$150,000. This Court should reverse.

Bob began working for Union Carbide Corporation in 1975, 20 years before the parties married. RP 175-77. He was laid-off from Union Carbide in 1997, just two years after the parties married in September 1995. RP 177-78. A few years later, Union Carbide merged with Dow Chemical. RP 177. Bob had three accounts from Union Carbide that became Dow Chemical accounts – a 401(k), a Defined Benefits Plan, and a stock account. RP 177, 179-80. Bob challenges the characterization of his entire Dow 401(k) as community property. CP 595-96,649.

While working for Union Carbide, Bob contributed to his 401(k) the amount necessary to obtain the corporate match. RP 178. He did not contribute to the 401(k) after leaving Union Carbide. *Id.*

As the result of the Union Carbide / Dow Chemical merger, Dow was only legally required to keep two years of account information. RP 230-31. Since Dow did not retain 401(k) account statements dating back to the 1995 marriage date, Bob was unable to provide them in the dissolution. RP 179, 230-31. Thus, Bob asked the trial court to divide the Dow 401(k) on a formula of 20/22 separate and 2/22 community, based on the pre and post-marital years he

paid into the 401(k) while working at Union Carbide. RP 179, 232. That is exactly how the parties agreed to divide Bob's Dow Defined Benefits Plan. RP 232-34. Under that formula, the community portion of the Dow 401(k) would be \$27,000, and the separate portion would be \$329,877 ( $\$356,877 - \$27,000 = \$329,877$ ). RP 216.

When Pam was asked how she could justify taking her entire pre-marital 401(k) with Arthur Anderson – valued at 151,764.86 – as her separate property, while denying Bob any separate portion of his Dow 401(k), Pam stated that there were three checks written to Dow during the marriage and she did not “know what that was for.” RP 67-68; Ex 36. She seemed to think that these checks might have been for community contributions to Bob's 401(k). RP 67-70.

But Bob did not put a “nickel” into his 401(k) after leaving Union Carbide. RP 178. Bob explained that he could continue buying Dow stock after leaving the company, and that these checks were for stock purchases related to the Dow stock account, not the Dow 401(k) account. RP 179-80. These are two distinct accounts. *Id.* Pam agreed that the checks were for “stock.” RP 68. Bob liquidated most of his Dow stock to purchase the marital home. RP 180-81.

Pam agreed that if Bob did not contribute to his Dow 401(k) after leaving Union Carbide's employ, then any separate portion of Bob's Dow 401(k) should be treated as Bob's separate property:

Q. Let us assume, Ms. Flagella, that Mr. Flagella did not contribute any money to his retirement plan after he left that employment. Do you believe his retirement plan should be afforded the same treatment as yours, which is to say that a separate property component of it should be backed out of the marital equation?

A. A separate property component?

Q. Yes.

A. I agree with that.

Q. So you believe that if there is a separate property component to Mr. Flagella's 401(k), it should be given the same treatment as your Arthur Andersen 401(k)?

A. Yes.

RP 70. Without any proof other than her own testimony, Pam asked the trial court to find that she did not contribute anything to her Arthur Anderson 401(k) during the parties' marriage. RP 66. Bob did not contest that the 401(k) was Pam's separate property, and the court awarded Pam the entire asset as her separate property. CP 634.

The trial court nonetheless characterized Bob's entire Dow 401(k) as community property. CP 595-96, 634, 649-50. In doing so, the trial court began its analysis by asking, "If [Bob] claims [the Dow

401(k)] is separate property has he overcome the strong presumption it is community property?" CP 596. The court ruled that "[t]o rebut the community property presumption [Bob] must offer 'clear and convincing evidence' that the property was acquired with separate funds." CP 596. The court went on to state that "[t]he spouse claiming the property in question that it was acquired from separate funds must be traced with some degree of particularity" [sic]. *Id.* The court ultimately ruled that Bob "failed to overcome the presumption that the 401(k) is community property and it will be characterized as such." CP 597.

The court's approach is entirely flawed. The character of property, whether separate or community, is determined at the time of acquisition. **Schwarz**, 192 Wn. App. at 189 (citing *In re Marriage of Pearson-Maines*, 70 Wn. App. 860, 865, 855 P.2d 1210 (1993)). An asset is separate property if it was acquired before marriage. **Schwarz**, 192 Wn. App. at 188 (citing *In re Marriage of White*, 105 Wn. App. 545, 550, 20 P.3d 481 (2001) (footnotes omitted); RCW 26.16.010. Once a party establishes the separate character of an asset, "a presumption arises that it remained separate property in the absence of sufficient evidence to show an intent to transmute the property from separate to community property." **Schwarz**, 192 Wn.

App. at 190 (quoting *In re Estate of Borghi*, 167 Wn.2d 480, 484, 219 P.3d 932 (2009)). The asset retains its separate character as long as it can be traced or identified. *Schwarz*, 192 Wn. App. at 190 (citing *Pearson-Maines*, 70 Wn. App. at 865).

It is undisputed that Bob acquired the Dow 401(k) in 1975, 20 years before the parties married. RP 66-68, 177. Based on the date of acquisition, the Dow 401(k) is plainly separate property. *Schwarz*, 192 Wn. App. at 189. A presumption thus arises that the asset retained its separate character. *Id.* The trial court thus erred in beginning its analysis with the “strong” presumption that Bob’s Dow 401(k) was community property. CP 596.

Further, the above analysis does not change simply because Bob possessed the Dow 401(k) during the marriage. *Schwarz*, 192 Wn. App. at 189, 194. “At most,” only the “weak presumption” that property possessed during the marriage is community would apply to the portion of the Dow 401(k) acquired and possessed before marriage. 192 Wn. App. at 194. Again, the trial court incorrectly applied a “strong” community property presumption. *Id.*; CP 596-97.

The court erred again in stating that Bob had to overcome the community property presumption by presenting evidence that separate funds were used to acquire the asset. CP 596. It is

undisputed that Bob used separate funds to acquire the 401(k) for 20 years. RP 66-68, 177. This gave rise to a presumption that the asset retained its separate character. **Schwarz**, 192 Wn. App. at 189, 194.

The trial court then stated that Bob had to trace the asset, but made no specific ruling about tracing. CP 596. The court said only that Bob had failed to show the values for the Dow 401(k) before the marriage, during the marriage, or on the date of separation. CP 596-97. This too is flawed.

Commingling separate and community funds “may” give rise to a presumption that the entire asset is community. **Schwarz**, 192 Wn. App. at 190. But “commingling in the ordinary sense” is not sufficient to change the character of separate property. 192 Wn. App. at 190. Rather, only “hopeless commingling” gives rise to the presumption that the entire asset is community (*id.*):

It is “[o]nly if community and separate funds are so commingled that they may not be distinguished or apportioned is the entire amount rendered community property.” [**Schwarz**, 192 Wn. App. at 190-91, citing **Pearson-Maines**, 70 Wn. App. at 866] (citing **In re Estate of Allen**, 54 Wn.2d 616, 622, 343 P.2d 867 (1959)). “If the sources of the deposits can be traced and identified, the separate identity of the funds is preserved.” [**In re Marriage of Skarbek**, 100 Wn. App. [444,] 448 [997 P.2d 447 (2000)].

The court said nothing about commingling, much less “hopeless comingling.” CP 596-97; RP 260-61. Since the trial court did not mention, much less rule on “hopeless comingling,” there is no means for this Court to review this point. *Infra*, Argument § F.

In any event, the record does not support a conclusion that comingling was hopeless. Bob could not obtain account statements for the Dow 401(k) dating back to the 1995 marriage date, where Dow Chemical did not maintain them. RP 179, 230-31. This matter stands in stark contrast to *In re Marriage of Shui*, in which the hopeless comingling involved proceeds from the sale of community and separate stock options moving between multiple accounts. 132 Wn. App. 568, 125 P.3d 180 (2005) *rev. denied*, 158 Wn.2d 1016 (2006); **Schwarz**, 192 Wn. App. at 191 (holding that the comingling in **Shui** was hopeless). There, the husband was awarded Microsoft stock option grants in July 1991, 1993 and 1994, before the parties' September 1994 marriage. **Shui**, 132 Wn. App. at 573. Post-marriage, husband was awarded stock option grants in July 1995, 1996, and 1997. 132 Wn. App. at 573. Husband exercised a portion of the 1991 options before the marriage, but did not exercise any other options until late 1998 and early 1999. *Id.* at 573-74. Husband then sold the resulting stock, initially depositing the

proceeds from the sale into a brokerage account in his name. *Id.* at 574. He later transferred the funds to another brokerage account in his name, subsequently dividing that account into four other brokerage accounts, one jointly titled. *Id.* The parties used the jointly-titled account to pay some community expenses. *Id.*

The trial court characterized the amounts in the four accounts as 61% husband's separate property and 39% community property. *Id.* The appellate court reversed, holding that "the funds [had] been mixed together and then dispersed to four different investment accounts, and [had] been used to purchase a variety of investments which [had] yielded different rates of return." *Id.* at 585. This matter plainly bears no resemblance to ***Shui***.

This matter is comparable to ***Schwarz***, in which the appellate court held that commingling was not hopeless. 192 Wn. App. at 194. There, the husband testified that he established his IRA before marriage, but was unable to obtain any account statement from before the marriage date. *Id.* at 192-93. Tax returns also showed that husband made four community property contributions to the IRA during the marriage, beginning in 2006. *Id.* at 193. Husband's expert apportioned the current balance of the IRA 86% separate property and 14% community property, calculating the separate portion of the

IRA as everything before the 2006 contribution plus appreciation. *Id.* The trial court adopted that approach and the appellate court affirmed. *Id.* at 194.

The appellate court also held that wife's brokerage account could be properly apportioned, reversing the trial court. *Id.* at 219. There, wife deposited cash and assets from eight different sources into her brokerage account. *Id.* While wife was able to prove that seven of the eight sources were separate, the eighth source was both separate and community. *Id.* Specifically, wife moved \$56,000 into her brokerage account from an account in which she had recently deposited \$10,000 in community funds. *Id.* at 219; App. ¶¶ 1 and 2. The appellate court nonetheless reversed the trial court's ruling that wife's entire brokerage account was community, holding that "[t]he fact that a marital asset cannot be apportioned to the penny will not excuse the court from apportioning it; any reasonable approach to apportioning is acceptable and in arriving at final figures, the benefit of the doubt can be given to the community." *Id.* at 219. In an appendix to its decision, the court then suggested that the \$10,000 be allocated to the community, which would result in characterizing 8.88% of the wife's account as community property. *Id.* at App. ¶¶ 2 and 3.

Finally, **Schwarz** correctly recognizes that the court must proceed equitably in characterizing assets. *Id.* at 217. There, for example, the court excused the wife's failure to provide "exhaustive" account statements, where husband too was unable to produce statements for an account characterized as his separate property. *Id.* at 216-17 (citing **Skarbek**, 100 Wn. App. at 449-50).

It was sufficient for Pam to claim that her entire 401(k) was separate property based on her testimony alone, without any other evidence that the community did not contribute to it. RP 66. Bob proved that he did not contribute to his Dow 401(k) during the marriage, satisfying Pam's objection to treating a portion of the Dow 401(k) as Bob's separate property. RP 67-68, 178, 230-32. Since Dow could not provide documents dating back more than two years, Bob presented an equitable way to apportion the Dow 401(k). RP 178, 230-32. That was a sufficient apportionment under **Schwarz**.

In sum, the trial court improperly applied a "strong" community property presumption and failed to even address whether the Dow 401(k) was hopelessly commingled. Apportionment is required when reasonable, even if imperfect. This Court should reverse.

**C. The court erred in failing to even mention Bob's separate property American Century IRAs, but including them in the distribution of community assets.**

The trial court failed to address, by way of written findings or an oral ruling, the American Century Growth and Select IRA accounts that are Bob's premarital separate property. It is undisputed that Bob acquired these accounts before marriage, and there is no evidence of commingling. Yet without explanation, the trial court distributed these accounts as community assets. This Court should reverse.

It is undisputed that Bob acquired the America Century Growth and Select IRAs long before the parties married. RP 187; Ex 66 at 2. Thus, the America Century IRAs were Bob's separate property when acquired, and a presumption arises that they remained Bob's separate property throughout the marriage. **Schwarz**, 192 Wn. App. at 188.

Pam agreed that the American Century IRAs were in Bob's name and could not explain why her proposed distribution of assets indicated that they were in her name. RP 78-79. Pam initially testified that she had "no idea" whether any community funds were placed into these IRAs, but nonetheless took the position that they were community assets to be divided. RP 19-20.

Pam later testified that the parties wrote checks in 1997 and 1998 to “American Century” – some to a “growth” account. RP 43-44 (citing Ex 36). Pam’s testimony was no more specific – she did not address Bob’s American Century IRAs, and did not mention specific accounts or specific account numbers. *Id.* This testimony does not establish a community contribution to Bob’s American Century IRAs.

The checks Pam referred to in exhibit 36 were written to “American Century Investments,” with memo lines referring either to “Growth (020-000508425),” or “Value (039-000004650).” Ex 36 at 56-62. The American Century Value account # 4650 was liquidated and gifted to Pam’s daughter to put toward a down payment on her home. RP 200-02; CP 634; Ex 67.

The American Century Growth account that the parties wrote checks to in 1997 and 1998 is not Bob’s IRA – the account numbers are different. *Compare* Ex 36 at 56-62 *with* Ex 66. Bob’s American Century IRA Growth account number is # 020-000581194, but the checks were written to Growth account # 020-000508425. *Id.* Thus, Pam’s testimony that checks were written to “American Century” during the marriage plainly does not establish any community contributions to Bob’s American Century IRAs. *Id.*

Pam's testimony is insufficient to overcome the presumption that Bob's separate property American Century IRAs remained his separate property. **Schwarz**, 192 Wn. App. at 190. To rebut the separate property presumption, Pam would have to establish that Bob's separate property American Century IRAs were hopelessly commingled. **Schwarz**, 192 Wn. App. at 190-91. As discussed above, Pam failed to establish any commingling, much less hopeless commingling.

The trial court did not expressly address the character of Bob's American Century IRAs. CP 593-98, 626-51; RP 257-63. But the asset distribution sheet identifies these IRAs as community property, awarding both to Pam. CP 634. The trial court failed the first step in an asset distribution – "hav[ing] in mind the correct character and status of the property as community or separate before" dividing the assets. **Schwarz**, 192 Wn. App. at 191. These IRAs, worth about \$52,000, should have been characterized as Bob's separate property and awarded to Bob, independent of the 50/50 split of community assets. *Id.*; CP 634-35. This Court should reverse.

**D. The court incorrectly characterized Bob's separate property inheritance as community property.**

Pam acknowledged that Bob received an inheritance during the marriage, and did not contest Bob's testimony regarding its nature and value. The inheritance remained in a single account, untouched, until Bob liquidated it, generating nearly \$100,000 he then put toward the down payment on the parties' marital home. The trial court incorrectly characterized Bob's inheritance as community property, and failed to account for his separate-property contribution to the community. CP 596. This Court should reverse.

Bob received an inheritance from his mother in 2001. RP 189-90. Bob's dad left his mother a fair amount of money after he passed away, but she was going through it too fast. RP 189. Bob had to step in and take control of her spending to ensure that she would have sufficient funds for the rest of her life. *Id.* When Bob's mother passed away, she left each of her five children \$35,000, and also left Bob an additional \$82,000 in a GE Elfun account for helping take care of her after his father's death. RP 195. Bob placed the \$35,000 cash into the community accounts, and left the \$82,000 in the GE Elfun account. RP 195, 200.

The GE Efun remained untouched for nine years until December 2010, when Bob sold most of it to generate \$100,000 for the down payment on the marital home. RP 196. By that point, the Efun account had appreciated to about \$102,000. *Id.*<sup>3</sup> All of the proceeds went toward the purchase of the marital home. RP 197. The parties' 2010 tax returns report capital gains and losses from the Efun sale. RP 197; Ex 75.

Bob testified that when they purchased the home, Pam knew that the inheritance was in the GE Efun account, as she was involved in the process of liquidating funds to generate their down payment:

[W]hen we were trying to buy the house, we were trying to figure out which funds we could liquidate to raise the cash to buy it -- to put the 200,000 down. And so we sat up in the hallway of the upstairs and lined out all the paperwork that we had to figure out where the money was going to come from and that's how we did it. And so she had to know at that time where it was.

RP 200. There was "no question in [Bob's] mind" that Pam knew that nearly \$100,000 of the down payment came from Bob's inheritance. RP 234-35.

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<sup>3</sup> Bob left \$2,000 in the GE Efun account to keep the account open. RP 192; 202. He agreed that the \$4,700 it had grown to by the time of dissolution should be divided as a community asset. *Id.*; Ex 77.

Before Bob testified, Pam acknowledged that Bob received an inheritance from his mother during the marriage, but stated that she did not know the amount or nature of the asset. RP 75-76. Pam did not respond to Bob's testimony that she knew that nearly \$100,000 of the down payment came from Bob's inheritance. RP 200, 234-35.

The trial court characterized the portion of Bob's inheritance used to purchase the marital home as community property, ruling that Bob failed to provide "documentation" of his inheritance. CP 597, 650; RP 261. The court's ruling includes many incorrect statements, including that Bob "provided no accounting of what happened to the GE Funds between the date he acquired them and the date the marital home was purchased." *Id.* That is false – Bob plainly testified that the funds sat in the GE Elfun account untouched from 2001 until 2010, when Bob liquidated the account to purchase the parties' home. RP 195-96.

The court ruled that Bob "failed to explain how much of the GE Funds were used to purchase the home, what the Funds were worth when they purchased the home and if any portion of the Funds remained after the purchase." CP 597; RP 261. These statements are also false – Bob explained: (1) that from the time he inherited the GE Elfun account in 2001 to the time the parties purchased the home

in 2010, the account had grown in value from \$82,000 to about \$102,000; (2) that he liquidated nearly \$100,000 from the GE Efun account to put toward the down payment; (3) that there was about \$2,000 left in the GE Efun; and (4) that the amount left in the GE Efun stayed in that account until the parties divorced. RP 195-97, 200. Again, Pam did not respond to Bob's testimony on this point.

Finally, the court ruled that Bob "failed to overcome the presumption that the GE Mutual Funds or any inheritance he used to purchase the family home were separate property and the GE Mutual Funds and all of the proceeds from the sale of the home are characterized as community property." CP 597. It is impossible to tell what this means. While it is accurate that an inheritance is presumptively separate property, it is Pam, not Bob, who would have to rebut that presumption. **Schwarz**, 192 Wn. App. at 188.

If the court misspoke and meant that Bob failed to overcome a presumption that his inheritance is *community* property, then the court applied the wrong presumption. CP 597. "[A]n asset onerously acquired during marriage is presumptively community property whereas one lucratively acquired ordinarily is not." Harry M. Cross, *Community Property Law in Washington (Revised 1985)*, 61 WALR 13, 27-28 (1986); **White**, 105 Wn. App. at 550. Assets acquired

during the marriage by gift or inheritance are separate property. **Schwarz**, 192 Wn. App. at 188 (quoting **White**, 105 Wn. App. at 550). Any increase in the value of separate property is presumed to be separate property, unless the increase is attributed to community funds or labor. **In re Marriage of Elam**, 97 Wn.2d 811, 816, 650 P.2d 213 (1982). A party loses the separate property presumption only if the asset is hopelessly commingled with community property. **Schwarz**, 192 Wn. App. at 190-91; **Skarbek**, 100 Wn. App. at 449.

Again, Pam conceded that Bob had an inheritance from his mother. RP 75-76. She did not contradict Bob's testimony establishing the amount and character of the inheritance when received and that it remained in a separate account until cashed out and contributed to the purchase of the marital home. 189-90, 194-97, 200, 234-35. Thus, the GE Elfun inheritance and its increased value are presumed to be separate property. **Schwarz**, 192 Wn. App. at 188; **Elam**, Wn.2d at 816. The trial court's findings to the contrary are at odds with controlling precedent and the only evidence on this point. *Compare id.*; RP 189-90, 194-97, 200, 234-35 with CP 596-97, 650.

If the trial court had properly characterized Bob's inheritance as separate property, then it would have had to consider whether to

adjust the asset distribution in light of Bob's disproportionate contributions to the community. *White*, 105 Wn. App. 553-54 & n. 24. Remand is required as there is no telling how the trial court would have accounted for Bob's inheritance if properly characterized. *In re Marriage of Shannon*, 55 Wn. App. 137, 142, 777 P.2d 8 (1989) (a mischaracterization requires remand "where (1) the trial court's reasoning indicates that its division was significantly influenced by its characterization of the property, and (2) it is not clear that had the court properly characterized the property, it would have divided it in the same way").

In sum, unrefuted testimony established that Bob contributed over \$100,000 of his separate property inheritance to the purchase of the marital home. Since the trial court mischaracterized Bob's inheritance as community property, it failed to consider Bob's substantial separate property contribution to the marital home. This Court should reverse.

**E. The court erroneously awarded Bob \$85,000 that no longer exists, representing an investment to pursue a potential business opportunity for the community.**

After receiving a \$100,000 severance package when he left CH2M Hill, Bob told Pam he planned to invest the money and began the due diligence phase of pursuing a business opportunity with

Apple. But when Apple pulled out of the project Bob was investigating, any business opportunity vanished. Finding that Pam did not know Bob was investing in this potential business venture, the trial court awarded Bob the full value of the invested funds – an \$85,000 phantom asset. But where Pam knew little about the parties' investments throughout the marriage, that is no basis for punishing Bob for an investment that did not pan out the way he had hoped. This Court should reverse.

In March 2013, Bob received a \$100,000 severance package when he was "let go" from CH2M Hill. RP 209-10. Bob was required to liquidate the stock, so had a large lump-sum of cash. RP 210. Bob told Pam that he was going to use those funds to find an investment for their future. *Id.* Pam did not disagree or suggest a different use, such as simply putting the money into savings, or taking an expensive vacation. RP 211. This was consistent with how the parties managed investments during the marriage. *Id.*

At the time, Bob's long-time friend, Charlie Clark, was examining whether there was a viable chemical business that could split off of from his company CEBA Tech's machine business. RP 111-12. Through Bob and Amy Judson, CEBA Tech's subsidiary, Crystallent Technology, was investigating a potential business

venture with Apple to manufacture sapphire into windows for electronic devices to make them unbreakable. RP 172-74. Of course, the hope was that a business would materialize and produce a gain for Bob and Pam. RP 209.

Apple was then in a joint venture with GT Solar, who was going to produce "massive" quantities of sapphire for Apple's products. RP 172. Bob is likely "one of the world's renowned experts in the manufacturing of sapphire into either windows or substrates." *Id.* It has many applications, one of which would be to make a cell phone screen unbreakable if dropped. RP 172, 174. The "problem," however, was having enough sapphire to use for such an application. RP 172. Apple and GT Solar had agreed to build a \$750 million facility where they would attempt to manufacture sufficient quantities of sapphire. *Id.*

Bob and Charlie, who used to work together, know how to manufacture sapphire. RP 173. Their hope was to leverage their knowledge into a profitable venture with Apple and GT Solar. *Id.* But Apple pulled out of the project, leaving GT Solar to file bankruptcy. RP 173-74.

After receiving his CH2M Hill severance, Bob invested about \$85,000, trying to put together a viable business with Apple and GT

Solar. RP 110, 112-13. Bob did not produce any business “documentation” because there was no business, thus no articles of incorporation, profit and loss statements, or the like. RP 109-11, 113. Rather, the investment went into a due-diligence phase – Bob was pursuing the potential for a business. RP 174.

Pam testified that she did not know Bob was investing community funds into the due-diligence phase for this potential business venture. RP 25-29. That was consistent with how the parties handled finances throughout their marriage, which is to say that Bob handled all of the investing during the marriage. RP 82, 181. This was not a “bone of contention” – Bob tried to involve Pam, but she chose not to participate. *Id.* Although Pam claims that Bob “demanded” to be in charge of their investments, she also concedes that she was “okay” with it, where Bob provided well for Pam and her children from a prior marriage. RP 82.

The trial court did not make any written findings regarding this investment, but ruled orally that the entire \$85,000 would be placed on Bob’s side of the ledger, where Bob invested the funds without Pam’s knowledge and did not document his “reasons” for the investment. RP 264. This ruling does not justify making Bob solely responsible for a community investment gone bad.

Bob did not provide “documentation” because there was no business. *Compare* RP 264 with RP 110-11, 113. Bob was investigating the potential for a business with Apple. RP 110-11, 113, 172-73. He explained at length his “reasons for the expenditure” – he had a large lump-sum severance package and wanted to invest it; Apple was planning on manufacturing sapphire for its phones and tablets; and Bob, an expert in sapphire manufacturing, hoped to leverage his expertise into a successful business venture with Apple. RP 172-75, 209-11.

As far as Pam’s knowledge of the investment, Pam did not know about many marital investments that made the community a lot of money. RP 82, 181. That is not a sufficient basis to award Bob \$85,000 that no longer exists, but was invested with the intent to benefit the community. CP 634.

In any event, the court accounted for the investment improperly, even assuming that it could penalize Bob for what turned out to be a bad investment. The trial court distributed what it characterized as community assets 50/50. CP 634-35; RP 265. But because the court awarded Bob a phantom asset valued at the entire community investment, \$85,000, the overall distribution leaves Pam with \$85,000 more than Bob. *Id.* That is plainly inconsistent with the

court's 50/50 distribution. CP 634-35; RP 265. If anything, Pam should get \$42,500 more than Bob – not \$85,000.

In short, consistent with how the parties handled their finances throughout the marriage, Pam had little knowledge of this investment. Unlike most of Bob's investments, this one did not pan out. That is no basis for punishing Bob by awarding him \$85,000 less than Pam.

**F. In many regards, the court's findings on the characterization and distribution of property are insufficient to permit meaningful review.**

A trial court must make findings of fact and conclusions of law sufficient to suggest the factual basis for the ultimate conclusions. CR 52(a); *Lawrence v. Lawrence*, 105 Wn. App. 683, 686, 20 P.3d 972 (2001). This rule specifically applies to divorce proceedings. CR 52(a)(2). The court need not make findings of fact on all matters about which there is evidence in the record, but only those which establish the existence or nonexistence of determinative factual matters. *In re Pet. of LaBelle*, 107 Wn.2d 196, 218, 728 P.2d 138 (1986).

This requirement serves the important purpose of confirming that the trial judge has considered the relevant facts in reaching its decision, and dealt fully and properly with all the issues in the case.

***State ex rel J.V.J. v. Van Guilder***, 137 Wn. App. 417, 424, 154 P.3d 243 (2007); ***LaBelle***, 107 Wn.2d at 218-19. Requiring adequate findings also ensures that the parties and the appellate courts are fully informed as to the bases of the trial court's decision. ***LaBelle***, 107 Wn.2d at 218-19. Without adequate findings, this Court cannot meaningfully review the trial court's decision. ***Lawrence***, 105 Wn. App. at 686.

As addressed above, the trial court often applied incorrect presumptions pertaining to the character of the assets before the court for distribution. *Supra*, Argument §§ B & D. The court found that Bob's entire Dow 401(k) was community property without addressing whether the asset – acquired 20 years before marriage – was hopelessly commingled. *Supra*, Argument § B. The court failed to even mention Bob's American Century IRAs, dividing them as community property despite uncontroverted evidence that they are Bob's separate property. *Supra*, Argument § C. The court's finding on Bob's inheritance is at odds with the only testimony on that issue. *Supra*, Argument § D. And the oral ruling on Bob's Apple investment provides insufficient basis for penalizing Bob for an investment that did not pan out. *Supra*, Argument § E.

In short, errors abound, and it is often impossible to tell why the trial court ruled the way it did. This Court should reverse and remand for a new distribution of assets with proper characterizations in mind.

**G. The court erred in declining to modify maintenance of \$6,000 a month, after Bob permanently lost his job.**

Bob moved to modify maintenance six weeks after trial, when it became clear that his former employer would not rehire him. Despite diligent efforts, he has not found meaningful employment. Yet the trial court refused to modify maintenance, leaving Bob to pay Pam \$6,000 a month, with only \$2,000 in unemployment income, until unemployment ran out. This Court should reverse.

The trial court may modify spousal maintenance when the moving party shows a substantial change in circumstances that the parties did not contemplate when the decree was entered. *In re Marriage of Ochsner*, 47 Wn. App. 520, 524, 736 P.2d 292 (1987); RCW 26.09.170(1). The required change in circumstances refers to the obligor spouse's financial ability to pay maintenance in relation to the recipient spouse's need to receive maintenance. *Ochsner*, 47 Wn. App. at 524. If the trial court finds that there is adequate cause to modify maintenance, then the amount and duration of

maintenance are governed by the same RCW 26.09.090(1) factors governing maintenance in the original decree. *In re Marriage of Spreen*, 107 Wn. App. 341, 347, 28 P.3d 769 (2001). The purpose of maintenance is to equalize the parties' post-dissolution standards of living for an appropriate time period. *In re Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984).

Although Bob lost his job in April 2016, his manager, Dennis Grant, told him that Glumac intended to re-hire him as a consultant if Glumac was awarded a contract it was pursuing. CP 746; App A.<sup>4</sup> at 17. Grant believed that this opportunity would materialize App A. at 17. Thus, there was a "strong potential that [Bob] would shortly be hired back as a consultant to run a major project." CP 746.

Bob moved to modify maintenance in June when it became abundantly clear that he would not be re-hired at Glumac. CP 747. Having received \$17,000 in accumulated-vacation pay and severance, Bob paid maintenance through August, despite having had only \$2,000 a month unemployment income since April. RP 747.

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<sup>4</sup> The relevant Supplemental Clerk's Papers that have not yet been completed by the Clark County Superior Court Clerk are attached as Appendix A. For ease of reference, Bob cites the Appendix number. Bob will submit an amended brief with the proper Clerk's Paper citations when he receives the Supplemental Clerk's Papers.

In September, he paid Pam half of his unemployment. *Id.* He has been borrowing money to pay maintenance. CP 747-48.

The trial court abused its discretion in declining to modify maintenance, where Bob lost his job, has been unable to find meaningful employment, and had no income other than unemployment, until that ran out. CP 746-50. This is a substantial change in circumstances justifying a maintenance modification. ***Ochsner***, 47 Wn. App. at 524.

Income-loss is a common basis for reducing maintenance. In ***Ochsner***, for example, a dramatic decline in family-business income constituted a substantial change in circumstances warranting a maintenance reduction. 47 Wn. App. at 524-26. And in ***In re Marriage of Drlik***, the parties agreed that husband's forced retirement was a substantial change in circumstances. 121 Wn. App. 269, 275, 87 P.3d 1192 (2004).

Income-loss is inexorably linked to RCW 26.09.090(1)(f), regarding the obligor spouse's ability to meet his own needs while paying maintenance. Since the court refused to modify maintenance, Bob is required to pay Pam \$6,000 a month without any income. CP 649, 746-48. But like Pam, Bob received very little cash in the distribution of assets. CP 634. Thus, the only way for him to pay

maintenance is to sell off his assets or go into further debt by borrowing money from his sister. CP 746-47. Indeed, Bob had to borrow from his sister to pay the “suit money” the trial court ordered and his own fees. CP 746-47, 751. He has borrowed to pay his own living expenses. CP 751. These are loans. *Id.*

The point of maintenance is to create equity for an appropriate time period. ***Washburn***, 101 Wn.2d at 179. Requiring Bob to pay maintenance that was three-times his unemployment income is not equity. Requiring him to pay maintenance without any income is worse.

The trial court incorrectly penalized Bob for failing to disclose his job loss before the court entered final orders. CP 755; 9/16/16 RP 4.<sup>5</sup> Bob did not immediately notify the court that he had been laid off because there was a “strong potential” that he would be re-hired at Glumac. CP 746; App A. at 17. That opportunity disappeared when Glumac did not receive the contract it was anticipating. *Id.*

Bob had no idea that his job loss would be long-term, or even permanent. CP 746. Rather, he reasonably believed that he would be rehired at Glumac soon after losing his job. *Id.* In other words,

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<sup>5</sup> The RP with this date reference are the supplemental RP filed after the first set of RP were completed.

Bob “contemplated” prompt re-employment, not long-term unemployment. *Ochsner*, 47 Wn. App. at 524; *In re Marriage of Zander*, 39 Wn. App. 787, 790, 695 P.2d 1007 (1985) (holding that a maintenance modification must be based on an “uncontemplated” change in circumstances). Bob could not have informed the trial court that he would not be rehired.

The court also erred in faulting Bob for failing to make greater efforts to find a job. CP 755; 9/16/16 RP 5. Bob began looking for a new job just weeks after learning that he lost his job at Glumac. App. A at 12, 14. Over the 18-week period leading up to the hearing on modification, Bob submitted at least two resumes each week, and engaged in three additional job-search activities each week, consisting of networking, and working with different recruiters. CP 750; App. A at 14. Bob’s search included a wide geographic range, covering Bellevue and Vancouver Washington, to Portland, and Bend Oregon. *Id.*

Bob’s job search did not generate any leads. CP 747. He is now 64, and worries that his job-prospects are poor. *Id.* This is consistent with what the placement program Pam was working with told her – her age, 59, is an impediment to finding work. RP 91; 9/16/16 RP 12.

Bob's unemployment is involuntary. CP 746; App. A at 11-12, 16-17. Bob lost his job because Glumac had a rough quarter and had to make layoffs. App. A at 16. They hoped to re-hire Bob, but the contract fell through. *Id.* In short, Bob amply demonstrated that his income loss is involuntary and that he is making good faith efforts to find meaningful employment. ***Fox v. Fox***, 87 Wn. App. 782, 785, 942 P.2d 1084 (1987) (*voluntary* reduction of income is not a substantial change in circumstances warranting modification absent a showing of good faith).

It is also an abuse of discretion to base maintenance on earning "capacity." CP 755. The trial court had no evidence of Bob's earning capacity other than historical income. CP 755; 09/16/16 RP 4-5. But Bob's former employer believed he was overpaid. RP 214. He lost his job, and there is no basis for the conclusion that he will find new employment at the same income level, particularly as he approaches retirement age. CP 747, 755. The court engaged in impermissible speculation in ruling that Bob will be able to find work that replaces his entire income. ***In re Marriage of Rouleau***, 36 Wn. App. 129, 132, 672 P.2d 756 (1983) (maintenance cannot be based on speculation and conjecture).

In any event, Bob's earning "capacity" cannot be a basis for maintenance, where Bob lost his income through no fault of his own. See *Fox*, 87 Wn. App. at 784. Maintenance is supposed to temporarily equalize post-dissolution economic circumstances. *Washburn*, 101 Wn.2d at 179. Bob offered to pay Pam half of his unemployment until it ran out. CP 747. That would have placed the parties in equal financial situations, at least in terms of income. But as explained above, Pam's property award far outstrips Bob's, given the court's characterization errors. *Supra*, Argument §§ A-E. It is grossly inequitable to require Bob to pay Pam \$6,000 a month, when he plainly lacks the income to do so.

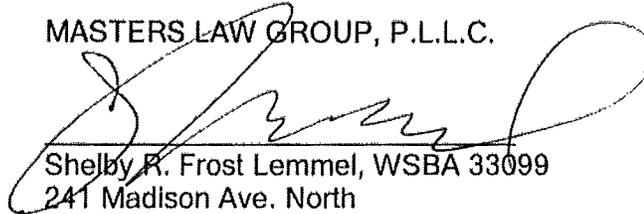
In sum, Bob lost his job and his livelihood through no fault of his own. Refusing to modify maintenance is punitive. This Court should reverse.

### **CONCLUSION**

The trial court's many characterization errors greatly affected the intended distribution of assets. The court's failure to modify maintenance is punitive. This Court should reverse and remand with instructions to properly characterize the assets, to revisit the asset distribution and to modify maintenance.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of January,  
2017.

MASTERS LAW GROUP, P.L.L.C.

A handwritten signature in black ink, appearing to read 'Shelby R. Frost Lemmel', is written over a horizontal line.

Shelby R. Frost Lemmel, WSBA 33099  
241 Madison Ave. North  
Bainbridge Island, WA 98110  
(206) 780-5033

CERTIFICATE OF SERVICE BY MAIL AND/OR EMAIL

I certify that I caused to be mailed via U.S. mail, postage prepaid, and/or emailed, a copy of the foregoing **BRIEF OF APPELLANT (consolidated)** on the 18<sup>th</sup> day of January, 2017, to the following counsel of record at the following addresses:

Co-Counsel for Respondent/Appellant:

Charles Gazzola, WSBA 17657  
208 SW 1<sup>st</sup> Ave Ste 340  
Portland, OR 97204

U.S. Mail  
 E-Mail  
 Facsimile

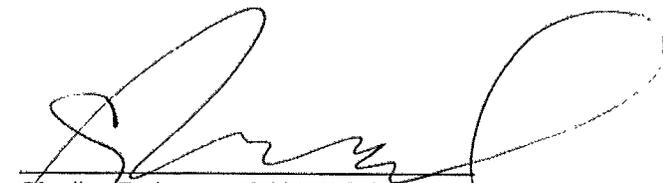
Attorneys for Petitioner/Respondent:

Christopher Boyd, WSBA 31449  
902 Esther Street  
Vancouver, WA 98660

U.S. Mail  
 E-Mail  
 Facsimile

Valerie Villacin, WSBA 34515  
1619 8<sup>th</sup> Avenue North  
Seattle, WA 98109

U.S. Mail  
 E-Mail  
 Facsimile

  
Shelby R. Lemmel, WSBA 33099  
Attorney for Respondent/Appellant

**RCW 26.09.090**

**Maintenance orders for either spouse or either domestic partner—Factors.**

(1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage or domestic partnership;

(d) The duration of the marriage or domestic partnership;

(e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

[ 2008 c 6 § 1012; 1989 c 375 § 6; 1973 1st ex.s. c 157 § 9.]

**NOTES:**

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**RCW 26.16.010****Separate property of spouse.**

Property and pecuniary rights owned by a spouse before marriage and that acquired by him or her afterwards by gift, bequest, devise, descent, or inheritance, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of his or her spouse, and he or she may manage, lease, sell, convey, encumber or devise by will such property without his or her spouse joining in such management, alienation or encumbrance, as fully, and to the same extent or in the same manner as though he or she were unmarried.

[ 2008 c 6 § 602; Code 1881 § 2408; RRS § 6890. Prior: See Reviser's note below.]

**NOTES:**

**Reviser's note:** For prior laws dealing with this subject see Laws 1879 pp 77-81; 1873 pp 450-455; 1871 pp 67-74; 1869 pp 318-323.

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Construction:** "The rule of common law that statutes in derogation thereof are to be strictly construed has no application to this chapter. This chapter establishes the law of the state respecting the subject to which it relates, and its provisions and all proceedings under it shall be liberally construed with a view to effect its object." [Code 1881 § 2417.]

"This chapter shall not be construed to operate retrospectively and any right established, accrued or accruing or in any thing done prior to the time this chapter goes into effect shall be governed by the law in force at the time such right was established or accrued." [Code 1881 § 2418.] This applies to RCW 26.16.010 through 26.16.040, 26.16.060, 26.16.120, 26.16.140 through 26.16.160, and 26.16.180 through 26.16.210.

*Descent of separate real property: RCW 11.04.015.*

*Distribution of separate personal estate: RCW 11.04.015.*

*Rights of married persons or domestic partners in general: RCW 26.16.150.*

# Appendix A

**COPY**  
Original Filed

**JUN 30 2016**

Scott G. Weber, Clerk, Clark Co.

1  
2  
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5  
6 SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLARK

7 In re the Marriage of:

8 PAMELA R. FLAGELLA,

Petitioner,

9 and

10 ROBERT N. FLAGELLA,

Respondent.

NO. 14-3-01640-6

SUMMONS  
(SM)

11  
12  
13 TO THE PETITIONER:

14 1. The Respondent has started an action in the above court  
15 requesting:

16 [X] that the maintenance obligation be reduced.

17 Additional requests, if any, are stated in the petition, a  
copy of which is attached to this summons.

18 2. You must respond to this summons and petition by serving a  
19 copy of your written response on the person signing this  
20 summons and by filing the original with the clerk of the  
21 court. If you do not serve your written response within 20  
22 days (or 60 days if you are served outside of the state of  
23 Washington) after the date this summons was served on you,  
24 exclusive of the day of service, the court may enter an order  
25 of default against you, and the court may, without further  
notice to you, enter a decree and approve or provide for the  
relief requested in the petition. In the case of a  
dissolution of marriage, the court will not enter the final  
decree until at least 90 days after filing and service. If  
you serve a notice of appearance on the undersigned person,

1 you are entitled to notice before an order of default or a  
2 decree may be entered.

3 3. Your written response to the summons and petition must be on  
4 form WPF DR 01.0300, Response to Petition (Domestic  
5 Relations). This form may be obtained by contacting the  
6 clerk of the court at the address below, by contacting the  
7 Office of the Administrator for the Courts at (360) 705-5328,  
8 or from the Internet at the Washington State Courts homepage:

9 <http://www.courts.wa.gov/forms>

10 4. If this action has not been filed with the court, you may  
11 demand that the petitioner file this action with the court.  
12 If you do so, the demand must be in writing and must be  
13 served upon the person signing this summons. Within 14 days  
14 after you serve the demand, the petitioner must file this  
15 action with the court, or the service on you of this summons  
16 and petition will be void.

17 5. If you wish to seek the advice of an attorney in this matter,  
18 you should do so promptly so that your written response, if  
19 any, may be served on time.

20 6. One method of serving a copy of your response on the  
21 petitioner is to send it by certified mail with return  
22 receipt requested.

23 This summons is issued pursuant to Superior Court Civil Rule 4.1  
24 of the state of Washington.

25 Dated: 10/29/10

  
Charles D. Gazzola, WSBA#17657  
Of Attorneys for Respondent

26 FILE ORIGINAL OF YOUR RESPONSE  
WITH THE CLERK OF THE COURT AT:

SERVE A COPY OF YOUR RESPONSE  
ON:

Domestic Relations Clerk  
Clark County Superior Court  
Clark County Courthouse  
1200 Franklin Street  
P.O. Box 5000  
Vancouver, WA 98668-5000

Charles D. Gazzola  
208 SW First Avenue  
Suite 340  
Portland, Oregon 97205  
Phone: (503)295-3025  
Fax: (503)248-0295



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**JUN 30 2016**

Scott G. Water, Clerk, Clark Co.

**Superior Court of Washington, County of Clark**

In re:

Petitioner:

PAMELA R. FLAGELLA

And Respondent:

ROBERT N. FLAGELLA

No. 14-3-01640-6

Financial Declaration of  
**RESPONDENT**  
(FNDCLR)

**Financial Declaration**

**1. Your personal information**

Name: Robert N Flagella

Highest year of education you completed: BScHE Your job/profession is: Chemical Engineer

Are you working now?

Yes. List the date you were hired (month / year): \_\_\_\_\_

No. List the last date you worked (month / year): April 01, 2016

What was your monthly pay before taxes: \$14,166.67

Why are you not working now? Laid off due to lack of projects

**2. Summary of your financial information**

(Complete this section after filling out the rest of this form.)

1. Total Monthly Net Income (copy from section 3, line C. 3.)	-\$3,562.00
2. Total Monthly Expenses After Separation (copy from section 7, line 1.)	\$3,230.00
3. Total Monthly Payments for Other Debts (copy from section 9)	\$1,612.25
4. Total Monthly Expenses + Payments for Other Debts (add line 2 and line 3)	\$4,617.00
Gross Monthly Income of Other Party (copy from section 3. A.)	\$8,024

**3. Income**

List monthly income and deductions below for you and the other person in your case. If your case involves child support, this same information is required on your *Child Support Worksheets*. If you do not know the other person's financial information, give an estimate.

*Tip:* If you do not get paid once a month, calculate your *monthly* income like this:  
 Monthly Income = Weekly x 4.3 or 2-week x 2.15 or Twice a month x 2

<b>A. Gross Monthly Income (before taxes, deductions, or retirement contributions)</b>		
	You	Other Party
Monthly wage / salary	\$0.00	\$2,400
Income from Interest / dividends	\$0.00	\$0
Income from business	\$0.00	\$0
Spousal support / maintenance received (Paid by: _____)	\$0.00	\$6,000
Other income	\$2,438	\$0
<b>Total Gross Monthly Income (add all lines above)</b>	<b>\$2,438</b>	<b>\$8,400</b>
<b>Total gross income for this year before deductions (starting January 1 of this year until now) 5/31/16</b>	<b>\$64,683</b>	<b>\$8,400</b>

<b>B. Monthly Deductions</b>		
	You	Other Party
Income taxes (federal and state)	\$0	\$374
FICA (Soc.Sec. + Medicare) or self-employment taxes	\$0	\$0
State Industrial Insurance (Workers' Comp.)	\$0	\$2
Mandatory union or professional dues	\$0	\$0
Mandatory pension plan payments	\$0	\$0
Voluntary retirement contributions (up to the limit in RCW 26.19.071(5)(g))	\$0	\$0
Spousal support / maintenance paid	\$6,000	\$0
Normal business expenses	\$0	\$0
<b>Total Monthly Deductions (add all lines above)</b>	<b>\$6,000</b>	<b>\$376</b>

<b>C. Net Monthly Income</b>		
	You	Other Party
1. Total Gross Monthly Income (from A above)	\$2,438	\$8,400
2. Total Monthly Deductions (from B above)	\$6,000	\$376
<b>3. Net Monthly Income (Line 1 minus Line 2)</b>	<b>-\$3,562</b>	<b>\$8,024</b>

**4. Other Income and Household Income**

*Tip: If this income is not once a month, calculate the monthly amount like this:  
 Monthly income = Weekly x 4.3 or 2-week x 2.15 or Twice a month x 2*

A. Other Income (Do not repeat income you already listed on page 2.)		
	You	Other Party
Child support received from other relationships	\$0	\$0
Other income (From: _____)	\$0	\$0
Other income (From: _____)	\$0	\$0
<b>Total Other Income (add all lines above)</b>	<b>\$0</b>	<b>\$0</b>

B. Household Income (Monthly income of other adults living in the home)		
	Your Home	Other Party's Home
Other adult's gross income (Name: _____)	\$0	\$0
Other adult's gross income (Name: _____)	\$0	\$0
<b>Total Household Income of other adults in the home (add all lines above)</b>	<b>\$0</b>	<b>\$0</b>

**5. Disputed Income** – If you disagree with the other party's statements about anyone's income, explain why the other party's statements are not correct, and your statements are correct:

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**6. Available Assets**

List your liquid assets, like cash, stocks, bonds, that can be easily cashed.	
Cash on hand and money in all checking & savings accounts	\$52,000
Stocks, bonds, CDs and other liquid financial accounts	\$13,000
Cash value of life insurance	\$0
Other liquid assets	\$0
<b>Total Available Assets (add all lines above)</b>	<b>\$65,000</b>

**7. Monthly Expenses After Separation**

Tell the court what your monthly expenses are (or will be) after separation. If you have dependent children, your expenses must be based on the parenting plan or schedule you expect to have for the children.

<b>A. Housing Expenses</b>		<b>F. Transportation Expenses</b>	
Rent / Mortgage Payment	\$1,060	Automobile payment ( <i>loan or lease</i> )	\$0
Property Tax (if not in monthly payment)	\$0	Auto insurance, license, registration	\$300
Homeowner's or Rental Insurance	\$0	Gas and auto maintenance	\$200
Other mortgage, contract, or debt payments based on equity in your home	\$0	Parking, tolls, public transportation	\$240
Homeowner's Association dues or fees	\$0	Other transportation expenses	\$0
<b>Total Housing Expenses</b>	<b>\$1,060</b>	<b>Total Transportation Expenses</b>	<b>\$740</b>
<b>B. Utilities Expenses</b>		<b>G. Personal Expenses (not children's)</b>	
Electricity and heating (gas and oil)	\$0	Clothes	\$100
Water, sewer, garbage	\$0	Hair care, personal care	\$50
Telephone(s)	\$0	Recreation, clubs, gifts	\$0
Cable, Internet	\$0	Education, books, magazines	\$0
Other ( <i>specify</i> ):	\$0	Other Personal Expenses	\$50
<b>Total Utilities Expenses</b>	<b>\$0</b>	<b>Total Personal Expenses</b>	<b>\$200</b>
<b>C. Food and Household Expenses</b>		<b>H. Other Expenses</b>	
Groceries for ( <i>number of people</i> ): _____	\$275	Life insurance (not deducted from pay)	\$0
Household supplies (cleaning, paper, pets)	\$55	Other ( <i>specify</i> ):	\$0
Eating out	\$250	Other ( <i>specify</i> ):	\$0
Other ( <i>specify</i> ):	\$0	Other ( <i>specify</i> ):	\$0
<b>Total Food and Household Expenses</b>	<b>\$355</b>	<b>Total Other Expenses</b>	<b>\$0</b>
<b>D. Children's Expenses</b>		<b>List all Total Expenses from above:</b>	
Childcare, babysitting	\$0	A. Total Housing Expenses	\$1,060
Clothes, diapers	\$0	B. Total Utilities Expenses	\$0
Tuition, after-school programs, lessons	\$0	C. Total Food and Household Expenses	\$355
Other expenses for children	\$0	D. Total Children's Expenses	\$0
<b>Total Children's Expenses</b>	<b>\$0</b>	E. Total Health Care Expenses	\$650
<b>E. Health Care Expenses</b>		F. Total Transportation Expenses	\$740
Insurance premium (health, vision, dental)	\$650	G. Total Personal Expenses	\$200
Health, vision, dental, orthodontia, mental health expenses not covered by insurance	\$0	H. Total Other Expenses	\$0
Other health expenses not covered by insurance	\$0	<b>I. All Total Expenses (add A - H above)</b>	<b>\$3,005</b>
<b>Total Health Care Expenses</b>	<b>\$650</b>	<i>Use section 11 below to explain any unusual expenses, or attach additional pages.</i>	

**8. Debts included in Monthly Expenses listed in section 7 above**

Debt for what expense (mortgage, car loan, etc.)	Who do you owe (Name of creditor)	Amount you owe this creditor now	Last Monthly Payment made
		\$	Date:

**9. Monthly payments for other debts (not included in expenses listed in section 7)**

Describe Debt (credit card, loan, etc.)	Who do you owe (Name of creditor)	Amount you owe this creditor now	Last Monthly Payment (Date and Amount)	
			Date:	Amount:
Step Daughter's College Loan	Navient	\$7,606.91	Date: 05/26/2016	\$135.82
Attorney Fees	BOA Credit Card	\$18,252	Date: 08/18/2016	\$1,507.39
Personal Loan	Susan M. Tiano	\$174,730.46	Date: 07/31/2016	\$400.00
		\$	Date:	\$
		\$	Date:	\$
		\$	Date:	\$
<b>Total Monthly Payments for Debts</b>				<b>\$2,043.21</b>

**10. Explanation of expenses or debts (if any needed):**

**The Loan for Step Daughter's College is shared between parties. I pay the debt and then receive reimbursement.**

**11. Lawyer Fees**

List your total lawyer fees and costs for this case as of today.

Amount paid	\$36,088	Source of the money you used to pay these fees and costs:
Amount still owed	\$18,252	Describe your agreement with your lawyer to pay your fees and costs: I pay all costs with funds on account
Total Fees/Costs	\$54,340	

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form are true.

Signed at (city and state): Portland, OR Date: 22 August 2016  
Robert N Flagella Robert N Flagella  
Sign here Print name

**Financial Records** – You must provide financial records as required by statute and state and local court rules. These records may include:

- Personal Income Tax Returns
- Partnership or Corporate Income Tax Returns
- Pay stubs
- Other financial records

**Important!** Do not attach financial records to this form. Financial records should be served on the other party and filed with the court separately using the *Sealed Financial Source Documents* cover sheet (FL All Family 011). If filed separately using the cover sheet, the records will be sealed to protect your privacy (although they will be available to all parties and lawyers in this case, court personnel and certain state agencies and boards.) See GR 22(c)(2).



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**JUN 30 2016**

Scott G. Weber, Clerk, Clark Co.

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**SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLARK**

In re the Matter of:

PAMELA R. FLAGELLA,

Petitioner,

and

ROBERT N. FLAGELLA,

Respondent.

NO: 14-3-01640-6

DECLARATION OF RESPONDENT  
IN SUPPORT OF MOTION TO  
REDUCE SPOUSAL MAINTENANCE

COMES NOW, Robert Flagella, and upon being first duly sworn deposes and says that I am the Respondent in the above captioned matter and present this Declaration in support of my Motion seeking to have my spousal maintenance obligation reduced. Pursuant to a Decree of Dissolution entered May 13, 2016, I was ordered to pay \$6,000 per month in maintenance. That was based upon my employment at Glumac wherein I was earning approximately \$175,000 annually. I was laid off roughly contemporaneously with the time of our divorce.

Page 1 -DECLARATION OF RESPONDENT IN SUPPORT OF MOTION  
TO REDUCE SPOUSAL MAINTENANCE

Gazzola & Hull, P.C.  
Attorneys at Law  
208 S.W. First Avenue, Suite 340  
Portland, Oregon 97204  
(503) 295-3025

1 At that time, I was led to believe that I would be re-hired as a  
2 consultant. A Declaration from my former superior, Dennis Grant, is  
3 submitted herewith. Unfortunately, that position did not materialize  
4 and as a result, my only source of income at the present time is  
5 unemployment.

6 There is no way that I can pay the maintenance obligation that I  
7 was first ordered to pay with my unemployment compensation. If we  
8 were still married, Petitioner would be feeling the pinch, as am I,  
9 as a result of my job loss and I do not believe it fair that I should  
10 continue to have a maintenance obligation to her in light of these  
11 circumstances. During our marriage, I was laid off at one point and  
12 Petitioner sought and obtained employment as a result. It is not  
13 clear to me as to whether or not Petitioner has any income at the  
14 present time but at a minimum, I should be entitled to a reduction in  
15 my ongoing maintenance obligation. Alternatively, I would ask that  
16 the court suspend my maintenance obligation unless and until I am  
17 able to obtain further employment.

18 I have sought employment with numerous places. They include  
19 McKinistry, Georgia-Pacific and many, many more. To date, I have not  
20 had any interviews and do not have any immediate job prospects.  
21 Given that I am nearly 64 years of age, I am concerned that job  
22 prospects may simply not come my way. See the attached for  
23 information related to my job search.  
24

1 Based upon the foregoing substantial and unanticipated in  
2 circumstances since our divorce, I am asking that the court modify  
3 and/or terminate my spousal maintenance obligation. In the event  
4 this matter is contested, I would request an award of attorney fees.  
5 Also submitted for the court to consider is my Financial Declaration.

6 I declare under penalty of perjury under the laws of the State  
7 of Washington that the foregoing is true and correct.

8 Signed at Portland, OR, on the 29 day of June 2016

9  
10   
11 Robert Flagella, Respondent

Employment Log

Week #	Date	Company Name	Location	Contact Method	Position	Leads
Week #01 Sat, 23-Apr-15	Sun, 17-Apr-2015 Sun, 17-Apr-2015	Hydro Flask Hydro Flask	Bend, OR Bend, OR	Online Resume Online Resume	Production Developer R&D Engineer	Indeed.com CandidatePoint.com HMW
Week #02 Sat, 30-Apr-15	Sun, 24-Apr-15 Mon, 25-Apr-15	VanderHouwen & Associates, Inc LAMI Research	Beverton, OR Tualatin, OR	Online Resume Online Resume	Senior Project Manager Chemical Systems Engineer	Networking with Associate (Jonathan Lubbeck) Seeking new job - Comparing notes Working with DICE.com on job search Connected with HIREDPEOPLE.com
Week #03 Sat, 07-May-15	Fri, 05-May-15 Fri, 06-May-15	CyberCoders Infogroup Northwest	Happy Valley, OR Happy Valley, OR	Online Resume Online Resume	Senior Project Manager Senior Project Manager	Connected with Barrett Group Connected with JobSeek Networking with Associate (Dennis Grant) Seeking new job - Comparing notes
Week #04 Sat, 14-May-15	Tue, 10-May-15 Tue, 10-May-15	Xtreme Consulting Group P3 Group	Portland, OR Portland, OR	Online Resume Online Resume	Project Manager Project Manager	Working with Zip Recruiters Working with Career Builder Networking with Associate (Geoff Jenks) Seeking new job - Comparing notes
Week #05 Sat, 21-May-15	Wed, 18-May-15 Wed, 18-May-15	TerraPower, LLC Through ZipRecruiter	Bellevue, WA Portland, OR	Online Resume Online Resume	Chemical Engineer Manufacturing Manager	Working with StartWire Recruiters Chasing a Project Engineer Position found May 15, 2016 in The Oregonian Networking with Majid Habibi
Week #06 Sat, 28-May-15	Thu, 26-May-15 Thu, 26-May-15	Subzer Pumps ASML	Portland, OR Hillsboro, OR	Mailed Resume Online Resume	Project Engineer Fab Operations Manager	Networking with Associate (Brian Johnson) Seeking new job - Comparing notes Working with "Beyond SmartMatch" Working with "Superior Group" on a possible position with LAMI Research
Week #07 Sat, 04-Jun-15	Thu, 02-Jun-15 Thu, 02-Jun-15	Apache Sepa Extrusions, Inc	Hillsboro, OR Portland, OR	Online Resume Online Resume	Manufacturing Manager Manufacturing Manager	Networking with Associate (Marilyn Jones) Seeking new job - Comparing notes Networking with Associate (Marsha Kyle) Seeking new job - Comparing notes Working with Beyond Recruiters
Week #08 Sat, 11-Jun-15	Fri, 10-Jun-15 Fri, 10-Jun-15	Georgia-Pacific Kelly Services	Canas, WA Vancouver, WA	Online Resume Online Resume	Project Manager Senior Project Manager	Networking with Associate (Amy Judson) Seeking new job - Comparing notes Networking with Associate (Brian Blainout) Seeking new job - Comparing notes Working with Glassdoor Recruiters
Week #09 Sat, 18-Jun-15	Thu, 16-Jun-15 Thu, 16-Jun-15	Church & Dwight Co. Ampflor Aerospace Portland, Inc	Vancouver, WA Portland, OR	Online Resume Online Resume	Plant Manager Manufacturing Engineering Manager	Networking with Associate (Ted Johnson) Seeking new job - Comparing notes Networking with Associate (Tina Day) Seeking new job - Comparing notes Working with HireManufacturing Recruiters
Week #10 Sat, 25-Jun-15	Mon, 20-Jun-15 Wed, 22-Jun-15	MackInerney Cascades	Portland, OR Portland, OR	Hand Delivered Online Resume	Senior Project Manager Production Manager	Investigating Plant Manager Position at Airgas, Inc Networking with Associate (Josh Welsh) Seeking new job Networking with Associate (Geoff Jenks) Seeking new job

= Paid



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**JUN 30 2016**

**Scott G. Weber, Clerk, Clark Co.**

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**SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLARK**

In re the Matter of:

PAMELA R. FLAGELLA,

Petitioner,

and

ROBERT N. FLAGELLA,

Respondent.

NO: 14-3-01640-6

DECLARATION OF DENNIS  
GRANT

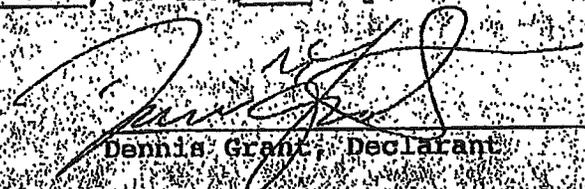
COMES NOW, Dennis Grant, and upon being first duly sworn deposes and says that I was Robert Flagella's manager while he was employed at Glumac as a Senior Project Manager. Mr. Flagella was a good employee but as projects in our industrial market decreased in the first quarter of 2016, it was determined that lay-offs would need to be made. Mr. Flagella was let go on April 1, 2016 which enabled him to have medical coverage through the month of April.

1 At about the time he was let go, I was advised of a confidential  
2 project that Glumac was pursuing. It was determined that if Glumac  
3 was awarded that contract, that Mr. Flagella would be hired as a  
4 consultant. I advised Mr. Flagella of this and felt the opportunity  
5 would present itself. Unfortunately, that project did not  
6 materialize and as a consequence, Mr. Flagella's contract opportunity  
7 was lost.

8 I have known Mr. Flagella for several years and would certainly  
9 give him a positive recommendation for future employers. I am  
10 unaware of any employment opportunities for Mr. Flagella at Glumac at  
11 this time.

12 I declare under penalty of perjury under the laws of the State  
13 of Washington that the foregoing is true and correct.

14 signed at 8:30 AM, on the 30 day of June 2016

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Dennis Grant, Declarant

DECLARATION OF DENNIS GRANT

CREST AFFILIATES  
ATTORNEYS  
2000 West Hill Avenue, Suite 240  
Renton, Washington 98057  
(206) 249-3025



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JUN 30 2016

Scott G. Weber, Clerk, Clark Co.

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7 SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLARK

8 In re the Marriage of:

9 PAMELA R. FLAGELLA,

Petitioner,

10 And

11 ROBERT N. FLAGELLA,

12 Respondent.

NO. 14-3-01640-6

MOTION AND DECLARATION  
RE: REDUCTION OF  
MAINTENANCE

(NO MANDATORY FORM)

13  
14 I. MOTION

15 Based on the declaration below, the undersigned moves the  
16 court to order the following:

- 17 1. Reducing the spousal maintenance order.  
18 2. Order for attorney fees.

19 IT IS SO MOVED:

20 Dated: 12/29/16

  
21 Charles D. Gazzola WSBA 17657  
22 Attorney for Respondent

# Appendix B

**FILED**

MAY 13 2016

11:52

Scott G. Weber, Clerk, Clark Co

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**Superior Court of Washington  
County of Clark**

In re the Marriage of:

PAMELA R. FLAGELLA,

Petitioner,

and

ROBERT N. FLAGELLA,

Respondent.

No. 14-3-01640-6

**Decree of Dissolution (DCD)**

**Clerk's action required**

**I. Judgment Summaries**

**1.1 Real Property Judgment Summary:**

Does not apply.

**1.2 Money Judgment Summary:**

Does not apply.

**End of Summaries**

**II. Basis**

Findings of Fact and Conclusions of Law have been entered in this case.

**III. Decree**

**It is decreed** that:

**3.1 Status of the Marriage**

The marriage of the parties is dissolved.

1 **3.2 Property to be Awarded the Petitioner**

2 The petitioner is awarded as separate property the property set forth in Exhibits "A", "C" and "D".  
3 These exhibits are attached or filed and incorporated by reference as part of this decree.

4 The Court's specific Findings of Fact and Conclusions of Law on Maintenance Award and Property  
5 Characterization is attached and incorporated as Exhibit "E"

6 **3.3 Property to be Awarded to the Respondent**

7 The respondent is awarded as separate property the property set forth in Exhibits "A", "C" and "D".  
8 These exhibits are attached or filed and incorporated by reference as part of this decree.

9 The Court's specific Findings of Fact and Conclusions of Law on Maintenance Award and Property  
10 Characterization is attached and incorporated as Exhibit "E"

11 **3.4 Liabilities to be Paid by the Petitioner**

12 The petitioner shall pay the community or separate liabilities set forth in Exhibits "B" and "C".  
13 These exhibits are attached or filed and incorporated by reference as part of this decree.

14 Unless otherwise provided herein, the petitioner shall pay all liabilities incurred by the petitioner  
15 since the date of separation.

16 **3.5 Liabilities to be Paid by the Respondent**

17 The respondent shall pay the community or separate liabilities set forth in Exhibits "B" and "C".  
18 These exhibits are attached or filed and incorporated by reference as part of this decree.

19 Unless otherwise provided herein, the petitioner shall pay all liabilities incurred by the petitioner  
20 since the date of separation.

21 **3.6 Hold Harmless Provision**

22 Each party shall hold the other party harmless from any collection action relating to separate or  
23 community liabilities set forth above, including reasonable attorney's fees and costs incurred in  
24 defending against any attempts to collect an obligation of the other party.

25 **3.7 Maintenance**

26 *\* see next page.*  
27 The respondent shall pay the petitioner \$6,000.00 in maintenance for forty-two (42) months. The  
28 first maintenance payment shall be due on May 1, 2016. Respondent shall pay half of his obligation  
29 on the 1<sup>st</sup> of each month and the remaining half on the 15<sup>th</sup> of each month.

30 The obligation to pay future maintenance is terminated upon the death of either party or the  
remarriage of the party receiving maintenance unless otherwise specified below.

The Court's specific Findings of Fact and Conclusions of Law on Maintenance Award and Property  
Characterization is attached and incorporated as Exhibit "E"

*UMB*  
*except as noted below.*  
*[Signature]*

1 **3.8 Restraining Order**

2 No temporary personal restraining orders have been entered under this cause number.

3  
4 **3.9 Protection Order**

5 Does not apply.

6 **3.10 Jurisdiction Over the Children**

7 Does not apply because there are no dependent children.

8  
9 **3.11 Parenting Plan**

10 Does not apply.

11 **3.12 Child Support**

12 Does not apply.

13  
14 **3.13 Attorney Fees, Other Professional Fees and Costs**

15 Does not apply. Each party to pay their own respective fees.

16 **3.14 Name Changes**

17 Does not apply.

18  
19 ///

20  
21 \* 3.7 Continued

22 Husband shall ~~also~~ designate wife as beneficiary of  
23 a portion of one of his retirement assets awarded herein  
24 in an amount sufficient to satisfy the full term of  
25 his spousal maintenance obligation. Husband shall provide  
26 verification of this designation within ten days of entry ~~of~~  
27 of the decree and annually upon written notice from ~~the~~  
28 wife. wife shall only be entitled to so much of the ~~benefit~~  
29 of the support award. ~~as is needed to satisfy the remaining duration~~

30 ///

3.15 Other

The parties shall take all steps necessary and sign all documents necessary to effectuate the Decree of Dissolution of Marriage, including any and all retirement plan documents, documents of title, etc. In the event a party fails to do so, the court shall, on its motion docket, appoint someone in that party's stead to take such acts and sign such documents pursuant to CR 70 and the court's inherent authority to do so.

Dated: 5/13/16 James E. Rull  
Judge/Commissioner

Petitioner or petitioner's lawyer:  
A signature below is actual notice of this order.  
Presented by:

Christopher M. Boyd  
CHRISTOPHER M. BOYD, WSBA #31449  
Attorney for Petitioner

Respondent or respondent's lawyer:  
A signature below is actual notice of this order.  
Approved for entry:  
Notice for presentation waived:

Charles D. Gazzola  
CHARLES D. GAZZOLA, WSBA #17657  
Attorney for Respondent

PAMELA FLAGELLA, Petitioner

ROBERT FLAGELLA, Respondent

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**EXHIBIT "A"**  
**DISTRIBUTION OF PROPERTY**

**PROPERTY TO BE AWARDED TO THE WIFE**

The Wife shall receive the following assets free and clear of any interest of the Husband and subject to any indebtedness thereon, unless otherwise noted, for which she shall pay and hold Husband harmless therefrom:

1. An equal share of the sale proceeds for the real property located at 17307 NE 32nd Avenue Ridgefield WA 98642, further described as:  

Lot 21, REGENCY PARK PHASE 2, according to the plat thereof, recorded in Volume 311 of Plats, Page 195, recorded of Clark County, Washington.

This property is listed for sale with a mutually agreed upon realtor. The Court retains jurisdiction to address all matters relating to the sale, listing, maintenance and cooperation of the parties in this transaction. Wife will have temporary occupancy of this property while it is listed for sale.

Upon the sale of said property, the parties will equally divide the "net sale proceeds" (sale price less realtor fees and costs of sale).
2. The 2009 Volvo C30.
3. 50% of the community share of Husband's UCC/DOW Pension Plan (community share is from date of marriage: September 23, 1995 to June 5, 2014). *date of termination of employment with UCC/DOW.* *ADG*  
CMB
4. The personal property and furniture detailed in Exhibit "D", except that Wife shall receive the following pieces of art: Charles Wysockie's painting "Labor Day" and Thomas Kinkade's painting "Paris City Lights".
5. The entirety of her Arthur Anderson (Fidelity) 401(k) Savings Plan.
6. The entirety of her Arthur Anderson LLP Defined Pension (MetLife).
7. The entirety of the American Century Growth IRA #1194 in Husband's name.
8. The entirety of the American Century Select IRA #7977 in Husband's name.
9. The entirety of the Neuberger & Berman IRA Act #6508 in Wife's name.
10. The entirety of the American Funds#6211 -Rollover IRA from Bearings in

1 Wife's name.

2 11. The entirety of the Janus Traditional IRA James Triton Fund D #5167 in  
3 Husband's name.

4 12. The entirety of the Fidelity Roth IRA Growth & Income #562483 in  
5 Husband's name.

6 13. The entirety of the Symetra Life Insurance Company IRA #4089 in Husband's  
7 name.

8 14. The sum of \$160,074.00 from the Dow Chemical Company 401(k) in  
9 Husband's name.

10 15. Wife shall receive \$123,000.00 of the CH2M Hill Deferred Savings Plan in  
11 Husband's name.

12 16. The \$50,000.00 Wife removed from the parties' joint bank account.

13 17. 50% of the community Delta Airline miles.

14 18. Any and all bank accounts in the sole name of the Wife.

15  
16 If a Qualified Domestic Relations Order (QDRO) is needed to facilitate any of the  
17 transfers above, the parties shall equally split the costs of hiring an attorney to effectuate  
18 the drafting and entering of those orders.

19 PROPERTY TO BE AWARDED TO THE HUSBAND

20 The Husband shall receive the following assets free and clear of any interest of the Wife and  
21 subject to any indebtedness thereon, unless otherwise noted, for which he shall pay and hold  
22 Wife harmless therefrom:

- 23 1. An equal share of the sale proceeds for the real property located at 17307 NE 32nd  
24 Avenue Ridgefield WA 98642, further described as:

25 Lot 21, REGENCY PARK PHASE 2, according to the plat thereof, recorded in  
26 Volume 311 of Plats, Page 195, recorded of Clark County, Washington.

27 This property is listed for sale with a mutually agreed upon realtor. The Court  
28 retains jurisdiction to address all matters relating to the sale, listing,  
29 maintenance and cooperation of the parties in this transaction. Wife will have  
30 temporary occupancy of this property while it is listed for sale.

1 Upon the sale of said property, the parties will equally divide the "net sale  
2 proceeds" (sale price less realtor fees and costs of sale).

- 3 2. The 2006 Scion SX vehicle.
- 4 3. The 2001 Volvo S60.
- 5 4. The personal property and furniture detailed in Exhibit "D", except that  
6 Husband shall receive the following pieces of art: Charles Wysockie's  
7 painting "The Hounds of Baskerville" and Thomas Kinkade's painting  
8 "Holiday".
- 9 5. The Dow Chemical Company 401(k) in Husband's name less the sum of  
10 \$160,074.00 awarded to Wife.
- 11 6. The CH2M Hill Deferred Savings Plan in Husband's name less the  
12 \$123,000.00 awarded to Wife.
- 13 7. The UCC/DOW Pension Plan in Husband's name except for 50% of the  
14 community share awarded to Wife above (community share is from date of  
15 marriage: September 23, 1995 to June 5, 2014).
- 16 8. The entirety of the GE Mutual Funds: Elfund Trusts Fund in Husband's name.
- 17 9. The entirety of the Dow Chemical Company #1595 account in Husband's  
18 name.
- 19 10. The entirety of the Beam Stock Accumulation Plan Account #3246 in  
20 Husband's name.
- 21 11. The entirety of the Paychex #1005 account in Husband's name.
- 22 12. The entirety of the First Financial Northwest #7331 account in Husband's  
23 name.
- 24 13. The \$19,000.00 Husband removed from the joint bank account.
- 25 14. 50% of the community Delta Airline miles.
- 26 15. Any and all bank accounts in the sole name of the Husband.

27  
28 If a Qualified Domestic Relations Order (QDRO) is needed to facilitate any of the  
29 transfers above, the parties shall equally split the costs of hiring an attorney to effectuate  
30 the drafting and entering of those orders.

EXHIBIT [A] – PROPERTY

Wheeler Montgomery & Boyd PLLC  
902 Esther Street  
Vancouver, WA 98660  
Phone: (360) 526-0155  
Fax: (360) 0-000000632

1 **EXHIBIT "B"**

2 **DISTRIBUTION OF DEBTS AND LIABILITIES**

3 **LIABILITIES TO BE PAID BY THE WIFE.**

- 4
- 5 1. Any and all encumbrances on property awarded to her in Exhibit "A."
  - 6 2. 50% of the Navient Student Loan #0094 (balance of approximately \$7,635.36 on June
  - 7 2015). Each party will pay half of the monthly payment each month.
  - 8 3. Any and all debts solely in her name, unless detailed specifically elsewhere.
  - 9 4. Wife shall be solely responsible for all debts incurred to her after separation except as
  - 10 listed herein.
  - 11

12 **LIABILITIES TO BE PAID BY THE HUSBAND**

- 13
- 14 1. Any and all encumbrances on property awarded to him in Exhibit "A."
  - 15 2. The Dow Chemical Savings 401(K) Loan.
  - 16 3. 50% of the Navient Student Loan #0094 (balance of approximately \$7,635.36 on June
  - 17 2015). Each party will pay half of the monthly payment each month.
  - 18 4. Any and all debts solely in his name, unless detailed specifically elsewhere.
  - 19 5. Husband shall be solely responsible for all debts incurred to him after separation
  - 20 except as listed herein.
  - 21
  - 22
  - 23
  - 24
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  - 26
  - 27
  - 28
  - 29
  - 30

Exhibit "C"

Date of Separation = 6.5.2014

Date of Marriage = 9.23.1995

ASSETS/DEBTS	Date	FMV:	DEBT	NET VALUE	COMMUNITY PROPERTY	
					To Husband	To Wife
<b>Real Property</b>						
17307 NE 32nd Ave. Ridgefield, WA 98642	Jan, 2016	\$652,515 (Est. - Listed for Sale)	(\$58,019.02)	\$594,495.98		
<b>Personal Property</b>						
2009 Volvo C30						X
2006 Scion SX					X	
2001 Volvo S60					X	
<b>US Bank Safety Deposit Box</b>						
Household goods in Wife's possession			\$0.00			X
Household goods in Husband's possession			\$0.00		X	
<b>Business Interests</b>						
Gem-Polishing Business (Crystalent Tech)				Approx \$85,000 H put in	\$85,000.00	
<b>Pension Plans/Retirement Accounts</b>						
W Arthur Anderson (Fidelity) 401(k) Savings Plan	Jan, 2016	\$151,764.86		\$151,764.86		X (SP)
W Arthur Anderson LLP Defined Pension (MetLife)				\$1,076/month		X (SP)
W American Century Growth IRA #1194	March, 2015	\$26,345.25		\$26,345.25		\$26,345.25
W American Century Select IRA #7977	March, 2015	\$25,373.06		\$25,373.06		\$25,373.06
W Neuberger & Berman IRA Act #6508	Dec, 2015	\$43,779.02		\$43,779.02		\$43,779.02
W American Funds#6211 -Rollover IRA from Bearings	April, 2016	\$74,111.63		\$74,111.63		\$74,111.63
W Janus Traditional IRA James Triton Fund D #5167	Dec, 2015	\$7,845.27		\$7,845.27		\$7,845.27
W Fidelity Roth IRA Growth & Income #562483	May, 2015	\$30,928.57		\$30,928.57		\$30,928.57
H Symetra Life Insurance Company IRA #4089	Sept., 2014	\$17,294.53		\$17,294.53		\$17,294.53
H Dow Chemical Company 401(k)	June, 2015	\$356,877.00		\$356,877.00	\$196,803.00	\$160,074.00
H CH2M Hill Deferred Savings Plan	Feb, 2016	\$355,547.56		\$355,547.56	\$232,547.56	\$123,000.00
H UCC/DOW Pension Plan (H's name)	Feb, 2013			\$2,151.83/month @ age 65		
<b>Stocks/Bonds/Investments/Life Insurance/Misc</b>						
G Management Investment Group (AMG) #8687	Jan, 2014	\$4,727.78		Sold/Gifted to Daughter		
H GE Mutual Funds: Eifun Trusts Fund	June, 2015	\$4,149.49		\$4,149.49	\$4,149.49	
G Fortune Brands and Home Security #3246	June, 2014	\$3,070.07		Sold/Gifted to Daughter		
H The Dow Chemical Company #1595	April, 2015	\$2,805.06		\$2,805.06	\$2,805.06	
H Beam Stock Accumulation Plan Account #3246	Dec, 2013	\$5,354.48		\$5,354.48	\$5,354.48	
H ACCO Brand Corp - Wells Fargo Account #7867	June, 2014	\$606.00				
G Merck & CO Inc #7793	July, 2014	\$1,348.67		Sold/Gifted to Daughter		
G Paychex #1005	Dec, 2015	\$3,710.82		\$3,710.82	\$3,710.82	
H First Financial Northwest #7331	Aug, 2015	\$1,250.00		\$1,250.00	\$1,250.00	
G Neuberger & Berman Large Cap Value #2000	July, 2014	\$14,967.36		Sold/Gifted to Daughter		
G American Century Value #4650	June, 2014	\$5,919.07		Sold/Gifted to Daughter		
G Nicholas Funds #9096	Aug, 2014	\$12,052.99		Sold/Gifted to Daughter		
G Franklin Resources #6573	July, 2014	\$7,736.10		Sold/Gifted to Daughter		
G Hartford Financial Services Group #4524	July, 2014	\$6,108.93		Sold/Gifted to Daughter		
AE Airline Miles 92,000 points					1/2	1/2
Neidiger Tucker Bruner Money Market #0818	June, 2013	Unknown		Account Closed?		
Lincoln National Life Insurance #VPA839518						
<b>Bank Accounts:</b>						
Chase Checking Account W's W/D at Separation	July, 2014	\$41,870.00		\$41,870.00		\$41,870.00
Chase Checking Account H's W/D at Separation	July, 2014	\$19,000.00		\$19,000.00	\$19,000.00	
First Federal Account #4844	June, 2014	\$151.54				

0-00000634  
EXHIBIT C

First Savings Bank NW Account #7008	June, 2014		\$218.30	
Olympia Federal Savings Account #4850			\$150.00	
Yakima Federal Savings	Jan., 2014		\$165.97	
Debts:				
Clark County Treasurer (Property Taxes)	Jan, 2016		(\$3,496.35)	
Chase Credit Card #3638	Feb, 2016		(\$427.00)	
Dow Chemical Savings 401(K) Loan	Aug, 2014		(\$42,219.73)	
Chase Freedom Credit Card Act #3259	Nov, 2014		(\$454.62)	
Bank of America Visa Act #0338	Aug, 2014		(\$631.87)	
American Express Gold Delta Card Act #31001	Aug, 2014	92,000 Airline miles	(\$1,767.49)	
American Express Costco Card				
Bank of America Visa #0713	Feb., 2016		(\$3,643.83)	
Chase Sapphire Credit Card #9805/8018/9046	Oct, 2014	\$1,190 Points as of 6/5/14	(\$388.34)	
Navient Student Loan (Lori) #0094	June, 2015		(\$7,635.36)	
<b>TOTALS:</b>				

	X (SP)
X (SP)	
	X
(\$3,817.68)	(\$3,817.68)
\$546,803.23	\$546,804.15
\$546,803.23	\$546,804.15

0-000000635

**IV. PROPOSED COMMUNITY PROPERTY DIVISION  
SEPARATE PROPERTY  
HOUSEHOLD GOODS (Furniture, appliances, tools, etc.)**

Item	Community or Separate Property	FMV	Debt Owed	Net Value	Award to H/W	Missing
<i>Hall tree</i>					W	
<b>ENTRANCE</b>						
Door handles and tools to install	Community Property			Gen	H	Door handles & Tools
Hangers	Community Property				H&W	
<i>Kings tree</i>					W	
<b>LIVING ROOM (This Room the Wife can have (Husband Gets Family Room) furniture and wall art except where noted)</b>						
Couch	Community Property				W	
Lounge Chair	Community Property				W	
Sitting Chair	Community Property				H	
Coffee Table	Community Property				W	
Lamps	Community Property				W	
Sony TV	Community Property				W	
Art on Walls <i>Kinkade "Carnet"</i>	Community Property				H&W	<i>Kinkade Missing over Fireplace</i>
Yamaha Tuner, NAD Pre-amp and Amber Amp	Separate Property				H	<i>Purchased Before Marriage</i>
Computer Hard Drive	Separate Property	<i>pictures (digital - share)</i>			W-H	
Vinyl Records	Separate				H&W	<i>Each purchased some before marriage</i>
Art on Shelves - A variety of plates and artwork cannot be identified at this time, so reserve the right to what is mine	Community Property				H&W	
<i>See #1 attachment</i>						
<b>DINNING ROOM</b>						
Table & Chairs (10)	Separate Property				H	
Cabinet	Separate Property				W	
Cabinet Content	Community Property				H&W	
Art - Charles Wysockle	Community Property				H	
Art - Kinkade <i>"Paris City Lights"</i>	Community Property				H	
<b>KITCHEN</b>						
Table & Chairs	Community Property				W	<i>Purchased Before Marriage</i>
Wall Clock	Separate Property				H	
Bar Stools	Community Property				H&W 2 to each	
Refrigerator <i>(Laufer/Max V. J. J.)</i>	Community Property				W	
Stand Mixer & Attachments <i>(Grain grinder)</i>	Separate Property				H	
Electrical Appliances	Community Property				H&W	
Dishes	Community Property				H&W	
Api'co Traditional Porcelain Dinnerware Place Setting	Community Property				H	<i>All Missing</i>
Williams-Sonoma Everyday Dinnerware	Community Property				W	
Glasses	Community Property				H&W	<i>Missing</i>
Silverware	Community Property				H&W	<i>Missing</i>
Cooking Utensils	Community Property				H&W	<i>Missing</i>
Bowls	Community Property				H&W	<i>Missing</i>
Serving Dishes	Community Property				H&W	<i>Missing</i>
Cooking Pans <i>Hand see attachment #2</i>	Community Property				H&W	<i>Missing</i>
Pots & Pans	Community Property				H&W	<i>Missing</i>
Food Cabinet	Community Property				H&W	
Art <i>Dante makes extractor</i>	Community Property				W	
<b>KITCHEN - Food Close: Half of all of it</b>						
Food	Community Property				W H&W	
Bottles	Community Property				H&W	
Jars	Community Property				H&W	
Bowls	Community Property				H&W	
appliances	Community Property				H&W	
Copies of all recipes	Community Property				H&W	
<i>Waffle maker, can cracked (clean) trying pan</i>					W	
<b>DRY SINK AREA (Between Kitchen &amp; Dining Room)</b>						
Crystal and Glassware	Community Property				H&W	
Alcohol	Community Property				H&W	
Silverware	Community Property				W H&W	<i>Silverware 16-Settings</i>
<i>(W) grandmother's dishes/silver service</i>					W	

"Controlling"

**IV. PROPOSED COMMUNITY PROPERTY DIVISION  
SEPARATE PROPERTY  
HOUSEHOLD GOODS (Furniture, appliances, tools, etc.)**

Item	Community or Separate Property	FMV	Debt Owed	Net Value	Award to H/W	Missing
<b>STUDY/DEN/OFFICE - All items belong to Husband and should be retrievable (Placed in Garage, but items missing)</b>						
Full Content of Room	Separate Property				H	
Closet Content - Coats and office supplies, etc	Separate Property				H	
Kinkade in Closet	Community Property				H - H&W	
Desks (2)	Separate Property				H	
File Cabinets (2)	Separate Property				H	
Book Shelves (2)	Separate Property				H	
Electronics, including computers and printers	Separate Property				H	
Stereo Systems (x2) - one to W - H's	Separate Property				H/W	
Cameras and equipment	Separate Property				H	
Film Camera	Separate Property				H	
Digital Cameras	Separate Property				H	
Water proof miniature camera	Separate Property				H	
Sony Digital Camera and lenses	Separate Property				W	
All Papers and Documents	Separate Property				H	
Art, paintings in office including primitive paintings in hallway	Separate Property				H	
Shredder						
Cooking Pans (Originally in attic - Stored as Gifts)	Separate Property					
Miscellaneous	Separate Property				H	-Several Missing Watches Missing
<b>MAIN LEVEL HALLWAY (Between Living Room, Den &amp; Master Bedroom)</b>						
Pictures - By Arnold Alanig "Front scene"	Separate Property				H	Purchased Before Marriage
Picture - To laundry "Love"	Separate Property				W - H	
Painting - Kinkade "Carnel Sunset"	Community Property				H - H&W	
Garage Hall Closet - Any coats belonging to Husband	Separate Property				H	
Garage Hall Closet - Any coats belonging to Wife	Separate Property				W	
Vacuum					H	
<b>MAIN LEVEL CLOSET HALLWAY BEFORE MASTER BEDROOM</b>						
Contents (Mostly Blankets, Sheet & Bedding)	Community Property				H&W	Blankets and Sheets Missing
Pendleton Blankets	Community Property				H&W	Missing
Wife's quilts					W	
<b>LAUNDRY ROOM</b>						
Washer & Dryer	Community Property				W - H&W	
Cleaning Supplies	Community Property				H&W	
<b>BATHROOM - MAIN LEVEL</b>						
Wall Art	Separate				H	Purchased Before Marriage
<b>FAMILY ROOM (This Room the Husband can have (Wife Gets Living Room) furniture and wall art except where noted)</b>						
Couch - leather section	Community Property				H	
Coffee Table	Community Property				H	
Recliners (2)	Community Property				H	
Rocker	Separate Property				W	
End Tables (3)	Community Property				H	
Lamps (2)	Community Property				H	
Cuckoo Clock	Community Property				W - H	
Cabinet (TV) with Contents (All purchased by me, most before marriage)	Community Property				H	
Sony TV	Community Property				H	
Stereo and speakers (8)	Community Property				H	
DVD Player	Community Property				W - H	
Dennon Audio/Video Unit	Separate Property				H	
Recorder, Wii Console and games	Community Property				H	
X-Box and games	Community Property				H	Missing
PS4	Community Property				H	
Vinyl Records	Community Property				H - divide	
Grandfather Clock on family room level hallway	Separate Property				H	
Pictures, Movie Equipment and Flagella Family Movies (x2)	Separate Property				H/W	
Helicopter in Bedroom Hall Closet	Separate Property				H	
Credenza	Community Property				W	
Credenza Content (Locked)	Community Property				H&W	
Art, including Wooster Scott & Wysocki paintings as per in family room	Community Property				H	Some Missing
<b>MASTER BEDROOM (Purchased before marriage)</b>						
Bed Frame and Mattress	Separate Property				H	
Dressers (3 - one with mirror)	Separate Property				H	
Desk Table	Separate Property				H	
Chairs (2)	Separate Property				H	
Bed Seat	Community Property				H - H&W	
Dressers and Desk Content	Community Property				H - H&W	
Art: "Hounds at Bakerville" "Hills of Kentucky"	Separate Property				W - H	Missing

H 3 \*

airlongy bedding

0-00000637

**IV. PROPOSED COMMUNITY PROPERTY DIVISION  
SEPARATE PROPERTY  
HOUSEHOLD GOODS (Furniture, appliances, tools, etc.)**

Item	Community or Separate Property	FMV	Debt Owed	Net Value	Award to H/W	Missing
<b>MASTER-BEDROOM BATHROOM</b>						
Towels	Community Property				H&W	Missing
Toiletries	Community Property				H&W	
Medicines	Community Property				H&W	
Beauty Products (Soaps, Shampoos, Etc)	Community Property				H&W	
Paper products	Community Property				H&W	
<del>Art</del>	<del>Community Property</del>				<del>H&amp;W</del>	
Electronics	Community Property				H&W	
Wall clock					H	
<b>BEDROOM HALLWAY LOWER LEVEL</b>						
Wooster Scott	Separate				H	
<b>2nd BEDROOM (This is the Elm Room; Wife can have furniture and wall art except where noted)</b>						
Elm Furniture	Community Property				W	
Dinning Room Chair in Room	Separate Property				H - H&W	
Closest Content	Community Property				H&W	
Robes	Community Property				H&W	
CD, DVD, Records	Separate Property				H&W	Purchased Before Marriage
Outdoor Speakers	Community Property				H - H&W	
Art: Hopkins family items					W	
<b>3rd BEDROOM (This is the Cherry Room; Husband can have furniture and wall art except where noted)</b>						
Cherry Furniture	Community Property				W - H	
Closest Content	Community Property				H&W	
Robes	Community Property				H&W	
Art in Closet (Most Purchased before Marriage)	Separate Property				H	
<b>4th BEDROOM - Bunk Beds</b> <i>Antique rocking wicker/Dark plates</i>						
Bunk Beds	Separate Property				H	
Dressers	Separate Property				W	
Miscellaneous Room Content	Community Property				H&W	
Closest Content	Community Property				H&W	
Telescope	Separate Property				H	
Art - including Red Skelton's	Community Property				H - H&W	
Art in Closet	Separate Property				H	
tennis rackets and handball rackets	Separate Property				H - divide	
<del>Pool table</del>					H	
<b>MAIN STAIRS CLOSET (Adjacent to Family Room)</b>						
Christmas Decorations / Trimmings (Petitioner does not like Christmas) <i>daughter's items to them</i>	Community Property				H	
Miscellaneous Items	Community Property				H&W	
<del>Halloween</del>					W	
<b>GARAGE/ATTIC/STORAGE</b> <i>Halloween</i>						
Husband receives all garage & attic content, included items placed there by wife; Wife returns all items removed.						
Tools	Separate Property				H	Tools Removed
Wood	Separate Property				H	
Instant Hot water Heaters (2)	Community Property				H	Missing
Refrigerators <i>to sell w/ home?</i>	Community Property				? - H	
Freezer <i>to sell w/ home?</i>	Community Property				? - H	
Christmas Displays (Petitioner does not like Christmas)	Community Property				H	4
Ladders <i>(1 to W), (1 large to H)</i>	Community Property				H&W	
<i>"red" tool box, 5 tools to W</i>					W	Missing Stored Christmas Gifts - Expensive Copper Cooking Pans; Some found in Office
All Remaining Attic Content	Community Property				H	
<b>OUTDOOR FURNITURE AND GARDEN EQUIPMENT</b>						
Furniture Set	Community Property				H&W - W	
Grill	Community Property				H&W - W	
<i>Garden art</i>					W	
<b>TOOLS</b>						
Mechanics	Separate Property				H	Removed from Tool Box
Wood Working	Separate Property				H	
<b>SPORTS EQUIPMENT / POOL ROOM / MANCAVE (Belongs to Husband, except where noted)</b>						
Pool Table	Separate Property				H	<i>only one of two</i>
Pool Table Support Equipment (i.e. pool queue)	Separate Property				H	
Flat Screen TV and Bose Speakers	Separate Property				H	
Pool Table Room Content	Separate Property				H	
Dart Board and Darts	Separate Property				H	
Art and Pictures	Separate Property				H	
Dinning Table and Chairs	Separate Property				W	
Bean Bag Chair	Separate Property				W	
<i>Base speakers</i>					W	

*#4*

*#5*

**IV. PROPOSED COMMUNITY PROPERTY DIVISION  
SEPARATE PROPERTY  
HOUSEHOLD GOODS (Furniture, appliances, tools, etc.)**

Item	Community or Separate Property	FMV	Debt Owed	Net Value	Award to H/W	Missing
<b>CRAFTROOM (Belong to Wife except where noted)</b>						
Sewing Equipment & Contents	Community Property				W	
House Phone System	Community Property				H	
House Wireless Internet System	Community Property				H	
Furnace Room - Content	Community Property				H&W	
Garbage Disposal	Community Property				H	-Missing
<i>1 Kew Chair / folding table</i>					H	
<b>BATHROOM LOWER LEVEL</b>						
Towels	Community Property				H&W	
Art	Community Property				W - H&W	
Electronics	Community Property				H&W	
<b>GLOSET NEAR BATHROOM LOWER LEVEL</b>						
Games	community Property				H&W	
<b>OTHER (Specify)</b>						
Grandfather Clock on main level hallway	Separate Property				W	
Barometer	Separate Property				H	
Grandfather Clock on family room level hallway	Separate Property				H	
Kinkade (Purchased prior to marriage)	Separate Property				H	
<del>Art, including Wall Paintings and Pictures - see list</del>	<del>Community Property</del>				<del>H</del>	
Bronze sculpture - Lynx	Separate Property				W - H	
All my clothes	Separate Property				H	
All my jewelry and watches	Separate Property				H	
Pillows, Bedding, Towels, , etc	Community Property				H&W	
Miscellaneous Items Unidentified	Community Property				H&W	
<i>Boat New Port Ymau Village</i>					H	
<b>STERLING SILVER / CRYSTAL / ART / COLLECTIONS</b>						
<del>Art</del>	<del>Community Property</del>				<del>H&amp;W</del>	
<del>Miscellaneous Items Unidentified</del>	<del>Community Property</del>				<del>H&amp;W</del>	
<b>GOLD/SILVER/OTHER (Specify)</b>						
<del>Miscellaneous Items Unidentified</del>	<del>Community Property</del>				<del>H&amp;W</del>	
<b>VEHICLES (include License Nos.)</b>						
<del>Volvo S60 (WA 338-XDE) 2001</del>	<del>Separate Property</del>				<del>H</del>	
<del>Volvo C30 (WA unknown) 2008</del>	<del>Separate Property</del>				<del>W</del>	
<del>Scion XA (WA unknown) 2008</del>	<del>Community Property</del>				<del>H&amp;W</del>	
<b>BOATS/TRAILERS/MOTORCYCLES (Use License Nos.)</b>						
NA					NA	

**IV. PROPOSED COMMUNITY PROPERTY DIVISION  
SEPARATE PROPERTY  
HOUSEHOLD GOODS (Furniture, appliances, tools, etc.)**

Pam's List Red Indicates  
Change

3/28/2016 7:34

Item	Community or Separate Property	FMV/AGE	Debt Owed	Net Value	Award to H/W	Missing
<b>ENTRANCE</b>						
Door handles and tools to install	Community Property		Gifted at Xmas 2015			Door handles & Tools
Hangers	Community Property			Y to H	H	
Christmas Tree (Husband wants community 10 ft tree)	Separate Property	2015			W	
Hall Tree	Community Property	14+ Years		Y to W	W	
<b>LIVING ROOM</b>						
Couch	Community Property	14+ Years		Y	W	
Lounging Chair	Community Property	14+ Years		Y	W	
Sitting Chair	Community Property	4 years		Y to H	H	
Coffee Table	Community Property	14+ Years		Y	W	
Lamps	Community Property	14+ Years		Y	W	
Sony TV	Community Property	5 Years		Y	W	
Kinkadee Carmel Sunset on Ocean - Gift to Wife but giving to Bob	Community Property	1999	Check Video	Y to H	H	Kinkadee Missing over Fireplace Moved to Hall by office
Yamaha Tuner, NAD Pre-amp and Amber Amp	Separate Property			Y	H	Purchased Before Marriage
Computer Hard Drive	Community Property	Pls Check Video		Y to W	W	Wife's Harddrive Each purchased some before marriage
Vinyl Records	Separate			Y	H	
Art on Shelves - A variety of plates and artwork cannot be identified at this time Some pieces moved some added from my mother List to come from Bob's Video	Community Property			List to come		
Wooden Vase Costa Rica	Community Property			Y	H	8day trip for W xmas gift from H
Italian Pottery Large Vase	Community Property			Y	W	
Poppy French Street Art	Community Property			Y	W	
Flower Cart French Street Art	Community Property			Y	W	
3 Rugs	Community Property	14+ years		Y	W	
Café Door French Street Art	Community Property			Y	H	
<b>DINNING ROOM</b>						
Table & Chairs (10)	Separate Property			Y	H	
Cabinet	Separate Property	China, Teapot & Glassware		Y	W	
Art - Charles Wysocki Labor Day in Bungalowville	Community Property	1988		Y to W	W	
Art - Kinkadee Paris City of Lights	Separate Property	1994		Y	H	
Small bench/candle sconces	Community Property			Y	W	
<b>KITCHEN</b>						
Table & Chairs	Community Property	14+ years		Y	W	
Wall Clock	Separate Property			Y	H	Purchased Before Marriage
Bar Stools - 4	Community Property	3 years		Y to W	W	
Refrigerator	Community Property	5 yrs		Y	W	
Stand Mixer & Attachments, GrainGrider/Rayloil Meat Grinder/Disks	Separate Property			Y	H	
Mixer Paster Maker extender	Community Property	4years		Y to W	W	Xmas Gifts to Wife
Electrical Appliances	Community Property			Divide	Divide	
<b>Dishes</b>						
Apilco Traditional Porcelain Dinnerware Place Setting	Community Property	3 yrs	Pic Available	Y	H	All Missing NO
Apilco Serving Pieces	Community Property	3 yrs		Y	Divide	Xmas Gifts to Wife
Williams-Sonoma Everyday Dinnerware	Community Property			Y	W	
Glasses	Community Property		Pic Available	Divide	Divide	Missing?
Silverware In Drawer	Community Property		Pic Available	Y to H	H	Missing?
Cooking Utensils	Community Property		Pic Available	Divide	Divide	Missing?
Bowls	Community Property		Pic Available	Divide	Divide	Missing?
Serving Dishes	Community Property		Pic Available	Divide	Divide	Missing?
Cooking Pans	Community Property		Pic Available	Divide	Divide	Missing?
Pots & Pans	Community Property		Pic Available	Divide	Divide	Missing?
Staub Grill & 2 casseroles	Community Property	8 yrs		Y to H	H	Xmas Gift to Wife
Staub Round Pots	Community Property	5 yrs		Y to W	W	Xmas Gift to Wife
Food Cabinet	Community Property			Divide	Divide	
Art Fruit Art/Mexico/Italy Plates on walls	Community Property			Y to W	W	Plate Collection of Wife
Italian Dishes, Bowls, etc. Service for 10	Community Property	xmas gifts over years		Divide	Divide	
<b>KITCHEN - Food Close: Half of all of it</b>						
Food	Community Property			Y	Divide	
Bottles	Community Property			Y	Divide	
Jars	Community Property			Y	Divide	
Bowls	Community Property			Y	Divide	
appliances	Community Property			Y	Divide	
Waffle Maker/ Largo Crockpot/electric frying pan	Community Property	5 years		Y to W	W	xmas gifts to wife wife will make copies
Copies of all recipes	Community Property			OK		
<b>DRY SINK AREA (Between Kitchen &amp; Dining Room)</b>						
Crystal and Glassware	Community Property			Divide	Divide	
Grandmothers Dishes silver service	Separate Property			Y	W	
Alcohol	Community Property			Y to H	H	
Silverware	Community Property		Gifted at Xmas			Silverware 16-Settings

**IV. PROPOSED COMMUNITY PROPERTY DIVISION  
SEPARATE PROPERTY  
HOUSEHOLD GOODS (Furniture, appliances, tools, etc.)**

Pam's List Red Indicates Change

3/28/2016 7:34

Item	Community or Separate Property	FMV/AGE	Debt Owed	Not Value	Award to H/W	Missing
<b>STUDY/DEN/OFFICE - All Items belong to Husband and should be retrievable (Placed in Garage, but Items missing)</b>				Inventory List Available provided to Sundstrom		
Full Content of Room	Separate Property	Some Community		Y	H	
Closet Content - Coats and office supplies, etc	Separate Property	Some Community		Y	H	
Kinkadee Village Christmas	Community Property	1997		Y to H	H	In closet
Desks (2)	Separate Property			Y	H	
File Cabinets (1)	Separate Property			Y	H	
File Cabinet (1)	Community Property			Y to H	H	Gift from Wife
Book Shelves (2)	Separate Property			Y	H	
Electronics, including computers and printers	Community Property	Purchased/Upgraded since 1995		Y to H	H	
Stereo Systems (2 complete systems in Bob's Possession)	Community Property	8 years		Y to H	H	Wife requests 1
Cameras and equipment					H	
Film Camera	Separate Property			Y	H	
Digital Cameras	Community Property	10 years		Y	H	
Water proof miniature camera	Community Property	5 years		Y	H	
Sony Digital Camera and lenses	Community Property	6 years		Y	W	Gift to Wife
All Papers and Documents	Separate Property	Pam Removed her files		Y	H	
Art, paintings in office	Separate Property			Y	H	
Shredder	Community Property	9 yrs		Y to H	H	
Cooking Pans (Originally in allie - Stored as Gifts for whom?)	Community Property	Purchased for Xmas gifts 1/2 Lori & Brian 2015			Divide	Several Missing NO
Remaining NEW Cooking Pans (noted as gifts)	Community Property					
Miscellaneous watches Picture can be provided	Community Property	Some Separate		Y	H	Watches Missing No Pic available
Tiffany Jewelry	Community Property				H	Missing ?
<b>MAIN LEVEL HALLWAY (Between Living Room, Den &amp; Master Bedroom)</b>						
Picture Forest Scene - By Arnold Alanig	Separate Property				H	Purchased Before Marriage
Picture - Wysocki Love	Community Property	1999 Purchased		Y to W	W	
Painting - Kinkadee Carmel Sunset on Ocean	Community Property			Y to H	H	Gift to W but H can have
Garage Hall Closet - Any coats belonging to Husband	Separate Property				H	
Garage Hall Closet - Any coats belonging to Wife	Separate Property				W	
<b>MAIN LEVEL CLOSET HALLWAY BEFORE MASTER BEDROOM</b>						
Contents (Mostly Blankets, Sheet & Bedding)	Community Property	*Divided and in garage check video			Divided	Blankets and Sheets Missing*
Pendleton Blankets	Community Property	*Downstairs on couch check video		Y to H	H	Missing*
Quilts Wife Made	Community Property			Y to W	W	
<b>LAUNDRY ROOM</b>						
Washer & Dryer	Community Property	14 yrs		Y to W	W	
Cleaning Supplies	Community Property				Divide	
<b>BATHROOM - MAIN LEVEL</b>						
Wall Art Framed During Marriage	Separate			Y	H	Purchased Before Marriage
<b>FAMILY ROOM</b>						
Couch - leather sectional Thomasville	Community Property	4 yrs		Y	H	
Coffee Table Glass Round Thomasville	Community Property	4 yrs		Y	H	
Recliners (2) Lazy Boy	Community Property	9 yrs		Y	H	
Rocker	Separate Property			Y	W	
End Tables (3)	Community Property			Y	H	
Lamps (2)	Community Property			Y	H	
* Cuckoo Clock Black Forrest	Community Property	Sep-09		Y to W	W	Gift from Husband
Cabinet (TV) with Contents (Some purchased by H) Receiver video games and game systems Xmas gift from wife	Community Property	15+ yrs		Y	H	
Sony TV	Community Property	6 yrs		Y	H	
Stereo and speakers (6)	Community Property	5 yrs		Y to H	H	Expensive NHT
DVD Player	Community Property	5 yrs		Y to W	W	
Dannon Audio/Video Unit	Separate Property			Y	H	
Recorder, Wii Console and games	Community Property	10 yrs		Y to H	H	
X-Box and games	Community Property	Never owned xbox Lisa received @ xmas			LISA	*Missing
PS4	Community Property	3 yr		Y	H	
Vinyl Records	Community Property				Divide	
Pictures, Movie Equipment and Flagella Family Movies	Separate Property			Y	H	
Pictures, Movie Equipment and Adair/Hopkins Family Movies	Separate Property			Y	W	
Helicopter in Bedroom Hall Closet	Separate Property			Y	H	
Lg. floor Rug Family Room Thomasville	Community Property	4yrs		Y to W	W	
Hope Chest High School Gift From Grandmother	Separate Property			Y	W	
Hope Chest (Locked) Contains memorabilia of daughters	Separate Property	Not Locked Hard to Open		Y	W	
Art:		*Nothing moved or missing see below check video				*Some Missing
Eimer & Lorella Wysocki	Community Property	1990		Y to W	W	Gift to Wife per Invoice
Max in the Adirondacks Wysocki	Community Property	1997		Y to H	H	
Birch Point Cove Wysocki	Community Property	1999		Y to H	H	
Cat Picture Hall by bathroom	Separate Property			Y	W	
Wooster Scott Bountiful Harvest	Separate Property	1994		Y	H	
Maggie the Messmaker Wysocki	Community Property	1996		Y to W	W	
Mirror by game room door	Community Property			Y to W	W	
<b>MASTER BEDROOM (Purchased before marriage)</b>						
Bed Frame Cherry	Separate Property			Y	H	

**IV. PROPOSED COMMUNITY PROPERTY DIVISION  
SEPARATE PROPERTY  
HOUSEHOLD GOODS (Furniture, appliances, tools, etc.)**

Pam's List Red Indicates  
Change

3/28/2016 7:34

Item	Community or Separate Property	FMV/AGE	Debt Owed	Net Value	Award to H/W	Missing
Mattress and Thomasville Bedding	Community Property	4 yrs		Y to H	H	
Allergy bedding protectors	Community Property			Y to W	W	
Dressers (3 - one with mirror)	Separate Property			Y	H	
Desk Table	Separate Property			Y	H	
Chairs (2)	Separate Property			Y	H	
Dressers and Desk Content	Community Property			Y	H&W	H Has His
Art Hounds of The Baskervilles-Wysocki	Community Property	1998	Check Video	Y to W	W	Missing NO On Wall
Art Holiday Gathering Kinkade	Community Property	1999		Y to H	H	Gift to Wife/husband Can Have

**IV. PROPOSED COMMUNITY PROPERTY DIVISION  
SEPARATE PROPERTY  
HOUSEHOLD GOODS (Furniture, appliances, tools, etc.)**

Pam's List Red Indicates Change

3/28/2016 7:34

Item	Community or Separate Property	FMV/AGE	Debt Owed	Net Value	Award to H/W	Missing
<b>MASTER-BEDROOM BATHROOM</b>						
Towels	Community Property	*Packed inventory list Sandstrom			Divided	Missing*
Toiletries	Community Property				Divided	Husband Has His
Medicines	Community Property				Divided	Husband Has His
Beauty Products (Soaps, Shampoos, Etc)	Community Property				Divided	Husband Has His
Paper products	Community Property				Divided	Husband Has His
Wall Clock No Art check video	Community Property	6 yrs		Y to W	W	
Electronics	Community Property				Divided	Husband Has His
<b>BEDROOM HALLWAY LOWER LEVEL</b>						
Wooster Scott- Race with the Stork	Separate	1994		Y	H	
<b>2nd BEDROOM</b>						
Elm Furniture, Night Stands, Lamps, Bedding, quilts	Community Property			Y	W	
Art Porlifino, Captain Returned from Sea, Greece Picture	Separate Property			Y	W	
Dinning Room Chair in Room	Separate Property			Y	H	
Close Content						
Robes	Community Property			Y	Divide	
CD, DVD, Records, Books	Community Property			Y	Divide	Purchased Before Marriage Not All
Outdoor Speakers	Community Property			Y to H	H	
Hopkins Family Pictures and Dishes	Separate Property			Y	W	
<b>3rd BEDROOM (Cherry Room; NO Husband can't have furniture he has two bedroom sets)</b>						
Cherry Furniture	Community Property	4 yrs		Y to W	W	
Close Content						
Robes	Community Property				Divide	
Art in Closet:						
Boise Unframed Wooster Scott	Community Property			Y to W	W	
Christmas Wysoki Unframed	Separate Property			Y	H	
4 unframed Wysoki seasons	Community Property			Y to H	H	
Posters from Albuquerque 3	Community Property			Y to H	H	
Posters from Porlifino 2	Community Property			Y	Divide	1 each
Street Oil Greece Unframed	Community Property			Y to W	W	
2 Posters Greece	Community Property			Y	Divide	1 each
<b>4th BEDROOM - Bunk Beds</b>						
Pendleton Bedding 2 blankets	Community Property			Y to H	H	
Bunk Beds	Separate Property			Y	H	
2 Mattresses	Community Property			Y to H	H	
Dressers 3	Separate Property			Y	W	
Miscellaneous Room Content	Community Property			Y	Divide	
Close Content	Community Property			Y	Divide	
Telescope	Separate Property			Y	H	Gift to husband
Art - Including Red Skellon's (2)	Community Property			Y to H	H	
Art in Closet	Community Property	Needs Identification			Divide	
Tennis rackets and handball rackets	Community Property			Y	Divide	1 each
Antique Rocking Horse and Plates	Separate Property			Y	W	
<b>MAIN STAIRS CLOSET (Adjacent to Family Room)</b>						
Christmas Decorations / Trimmings	Community Property			Divided and Wife keeping those Belonging to Daughters	H	
Miscellaneous Items	Community Property			Y	Divide	
Halloween	Community Property			Y	W	
<b>GARAGE/ATTIC/STORAGE Attic is Community</b>						
Tools Pls Check your Video	Separate Property				H	*Tools Removed NO
Tool Box (Red)	Separate Property	Gift from Pam's Dad		Y	W	
Wood	Separate Property			Y	H	
New Large Craftsman Toolchest	Community Property	4 yrs		Y to H	H	
Instant Hot water Heaters (2) Pls Check Video	Community Property			Behide Rocket Box	H	Missing NO
Refrigerators	Community Property	8 yrs		Y	H	
Freezer	Community Property	8 yrs		Y	H	
Christmas Tree & Display	Community Property			Y	H	
Ladders Large Folding	Community Property	8 yr		Y to H	H	
Step Ladder	Community Property	4 yrs		Y to W	W	
All Remaining Attic Content: Letaun say, 2 TV wall mounts, 1 pair ice skates, sponges, light bulbs, 12 cases of oil, 1 slot toaster, long carriage printer, remainder to be inventoried and divided. Please supply via video	Community Property			Gifts given to girls Xmas of 2015	Divide Remaining	To Come NO Missing Stored Christmas Gifts - Expensive Copper Cooking Pans; Some found in Office
<b>OUTDOOR FURNITURE AND GARDEN EQUIPMENT</b>						
Furniture Set	Community Property	14 + yrs		Y to W	W	
Grill	Community Property	14 + yrs		Y to W	W	
All Garden decorations	Community Property	14 + yrs		Y to W	W	
<b>TOOLS</b>						
Mechanics	Separate Property	Nothing Removed NO		Y	H	Removed from Tool Box NO
Wood Working	Separate Property			Y	H	
<b>SPORTS EQUIPMENT / POOL ROOM / MANCAVE (Belongs to Husband, except where noted)</b>						
Pool Table	Community Property	5 yrs		Y	H	

**IV. PROPOSED COMMUNITY PROPERTY DIVISION**  
**SEPARATE PROPERTY**  
**HOUSEHOLD GOODS (Furniture, appliances, tools, etc.)**

Pam's List Red Indicates  
Change

3/28/2016 7:34

Item	Community or Separate Property	FMV/AGE	Debt Owed	Net Value	Award to H/W	Missing
Pool Table Support Equipment (i.e. pool queue)	Community Property	5 yrs		Y	H	
Flat Screen TV	Community Property	14+		Y	H	
Pool Table Room Content	Community Property	5 yrs		Y	H	
Dart Board and Darts	Community Property	4 yrs		Y	H	
Art and Pictures 6 Red Skelton Prints	Separate Property			Y	H	
Dinning Table and Chairs	Separate Property			Y	W	
Bean Bag Chair LISA	Separate Property			Y	LISA	
Bose Speakers	Community Property	12+		Y to W	W	

**IV. PROPOSED COMMUNITY PROPERTY DIVISION  
SEPARATE PROPERTY  
HOUSEHOLD GOODS (Furniture, appliances, tools, etc.)**

Pam's List Red Indicates  
Change

3/28/2016 7:34

Item	Community or Separate Property	FMV/AGE	Debt Owed	Net Value	Award to H/W	Missing
<b>CRAFTROOM (Belong to Wife except where noted)</b>						
Sewing Equipment & Contents	Community Property			Y	W	
House Phone System	Community Property			Y	H	
House Wireless Internet System	Community Property			Y	H	
Furnace Room - Content						
Garbage Disposal (2) check video	Community Property	1 Gifted at Xmas 2015		Y	H	Missing NO
Ikea Chairs and Folding Table	Community Property			Y	W	
<b>BATHROOM LOWER LEVEL</b>						
Towels	Community Property			Y	Divide	
Art (1)	Community Property	5 yrs		Y to W	W	
Electronics	Community Property				Divide	
<b>CLOSET NEAR BATHROOM LOWER LEVEL</b>						
Games	Community Property				Divide	
<b>OTHER (Specify)</b>						
Grandfather Clock on main level hallway	Community Property			Y	W	Gift from Husband
Barometer	Community Property			Y	H	Gift From Wife
Grandfather Clock on family room level hallway	Community Property			Y	H	Gift To Husband
Art: Including Wall Paintings and Pictures	Community Property	To be Identified			To Come	
Bronze sculpture - Lynx	Community Property	2008		Y to W	W	Gift to Wife
All H clothes	Separate Property	Placed in garage already provided			H	
All H jewelry and watches	Separate Property				H	
Pillows, Bedding, Towels, etc	Community Property	Husband 1/2 in garage See Sandstrom Inventory			Divided	
Miscellaneous Items Unidentified NEED Identification	Community Property				To Come	
All W jewelry	Separate Property			Y	W	
800+ Piece Department 10 Christmas Village	Community Property	collected in marriage		Y to H	H	
<b>GOLD/STERLING SILVER / CRYSTAL / ART / COLLECTIONS</b>						
Art Need Identification	Community Property				To Come	
Miscellaneous Items Unidentified Needs Identification	Community Property				To Come	
<b>VEHICLES (Include License Nos.)</b>						
Volvo S60 (WA 336-XOF) 2001	Community Property			Y	H	
Volvo C30 (WA unknown) 2009	Community Property			Y	W	
Scion XA (WA unknown) 2006	Community Property			?	H&W	Promised to LISA
<b>BOATS/TRAILERS/MOTORCYCLES (Use License Nos.)</b>						
NA					NA	

6  
CWS

FILED

APR 28 2016

11:53

Scott G. Weber, Clerk, Clark Co

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

PAMELA FLAGELLA,  
Petitioner,

Case No. 14-3-01640-6

And

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON  
MAINTENANCE AWARD and  
PROPERTY  
CHARACTERIZATION**

ROBERT FLAGELLA,  
Respondent.

The Court's Findings of Fact and Conclusions of Law are as follows:

In determining the maintenance issue the Court considers the factors set forth in RCW 26.09.090.

1: The first factor the Court considers are the financial resources of Mrs. Flagella, including the separate or community property apportioned to her, and her ability to meet her needs independently.

The Court finds that the parties were married on September 23, 1995 and separated on August 13, 2014. Temporary Orders entered by the Court on October 8,

ORDER

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Exhibit "E" 0-000000646

2014, awarded Mrs. Flagella \$5,000 per month commencing October 1, 2014. Other than the above maintenance award Mrs. Flagella had no other financial resources to independently meet her financial obligations during the pendency of this proceeding.

The sum of \$546,804.00 plus fifty percent of the proceeds from the sale of the family home was awarded to Mrs. Flagella in separate and community property in the Decree of Dissolution.

2. The second factor the Court is to consider is the time necessary to acquire sufficient education or training to enable Mrs. Flagella to find employment appropriate to her skill interests, style of life and other attendant circumstances.

The Court finds that Mrs. Flagella is 59 years old and retired in 2010 from her employment with the U.S. Bearings. At the time of her retirement Mrs. Flagella was earning in excess of \$70,000 per year. She is currently attending Clark College and expects to receive a Microsoft Specialist Certificate by the end of 2017 if all of the classes she needs will be offered by the college throughout the next year. After she gains her certificate and has upgraded her skills Mrs. Flagella plans to enter the job market. Because of her age, current skills and educational background Mrs. Flagella hopes to gain employment in a clerical and administrative assistant position earning \$14.25 per hour or approximately \$29,000 per year.

3. The third factor the Court is to consider is standard of living established during the marriage.

The Court finds that the parties own a 4700 square foot home with five bedrooms and three bathrooms that Mrs. Flagella lives in. Mrs. Flagella would like to rent a condominium with two bedrooms which will cost over \$1700 per month to maintain the

standard of living she is accustomed to. Mr. Flagella has been living with friends since the parties separated.

No other evidence regarding the parties standard of living was offered.

4. The fourth factor the Court considers is the duration of the marriage.

The Court finds that the parties were married nineteen years at date of separation and over 20 years on the day of trial. The duration of the marriage is a significant factor in this case.

5. The fifth factor is the age, physical and emotional condition and financial obligation of the spouse seeking maintenance.

The Court finds that Mrs. Flagella is 59 years old and her date of birth is February 18, 1957. There was no evidence offered regarding her physical or emotional condition. Her current financial needs are being met by the temporary award of maintenance. However, once the Decree is entered she will be required to relocate to another residence and will incur additional medical expenses of \$744 per month for COBRA medical insurance and her deduction will increase from \$1500 to \$3000 per year.

6. The sixth factor that the Court is to consider is the ability of Mr. Flagella to meet his needs and financial obligations while meeting those of Mrs. Flagella.

The Court finds that based upon Mr. Flagella's historical earnings he has the ability to continue to earn in excess of \$170,000 a year and net approximately \$9000 per month. Mr. Flagella will also have considerable community and separate property awarded to him which will allow him to meet his financial needs and pay a maintenance award to Mrs. Flagella.

The Court further finds that Mrs. Flagella has received maintenance since the orders entered in October 2014.

The Court further finds that an additional 42 months of maintenance of \$6,000 per month commencing 05-01-2016 and ending 11-01-2019 is reasonable.

The Court finds that the \$6,000 payment per month will result in federal income taxes of \$1,155 per month which will net her approximately \$4845 per month which is approximately one half of Mr. Flagella's net income. The Court finds that this is a reasonable sum of maintenance.

**In characterizing the community and separate property of the parties the issues are as follows:**

**First Issue:** Whether Mr. Flagella's Dow Chemical 401(K) should be characterized as separate or community property.

If he claims it is separate property has he overcome the strong presumption it is community property?

To rebut the community property presumption he must offer "clear and convincing evidence" that the property was acquired with separate funds. Proof greater than a mere preponderance of evidence but something less than proof beyond a reasonable doubt.

The requirement of clear and satisfactory evidence is not met by the mere self-serving testimony of Mr. Flagella.

The spouse claiming the property in question that it was acquired from separate funds must be traced with some degree of particularity.

ORDER

0-000000649

In this case Mr. Flagella provided no statements showing the value of the property before the marriage on 9/23/1995, during the marriage or at date of separation on 8/13/2014. The only statement he provided was dated June 30, 2015.

The respondent has failed to overcome the presumption that the 401(K) is community property and it will be characterized as such.

**Issue 2:** Whether the GE Mutual Funds should be characterized as Mr. Flagella's separate property.

Mr. Flagella testified that he acquired the GE Mutual Funds from a \$99,000 inheritance he received. Other than his testimony he provided no documentation of this inheritance or any documentation of the value of these funds.

Mr. Flagella testified at trial that the parties used GE Funds along with other community property to buy the marital home. But he provided no accounting of what happened to the GE Funds between the date he acquired them and the date the marital home was purchased.

He failed to explain how much of the GE Funds were used to purchase the home, what the Funds were worth when they purchased the home and if any portion of the Funds remained after the purchase.

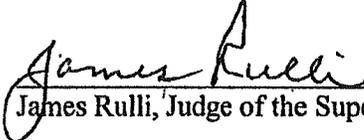
He failed to produce the closing statement for the purchase of the home, any bank statements showing a down payment or checks evidencing any payments.

The respondent has failed to overcome the presumption that the GE Mutual Funds or any inheritance he used to purchase the family home were separate property and the GE Mutual Funds and all of the proceeds from the sale of the home are characterized as community property.

ORDER

0-000000650

DATED this 28 day of April, 2016.

  
James Rulli, Judge of the Superior Court

ORDER

0-00000651

# MASTERS LAW GROUP PLLC

January 18, 2017 - 2:09 PM

## Transmittal Letter

Document Uploaded: 4-490668-Appellant's Brief.pdf

Case Name: In re the marriage of Flagella and Flagella

Court of Appeals Case Number: 49066-8

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Shelby Lemmel - Email: [shelby@appeal-law.com](mailto:shelby@appeal-law.com)

A copy of this document has been emailed to the following addresses:

[chip@gazzolahull.com](mailto:chip@gazzolahull.com)

[cboyd@vancouverlaw.net](mailto:cboyd@vancouverlaw.net)

[valerie@washingtonappeals.com](mailto:valerie@washingtonappeals.com)

[cornie@appeal-law.com](mailto:cornie@appeal-law.com)